

***United States Court of Appeals
for the Second Circuit***



APPENDIX

NO. 77-4217

United States Court of Appeals
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

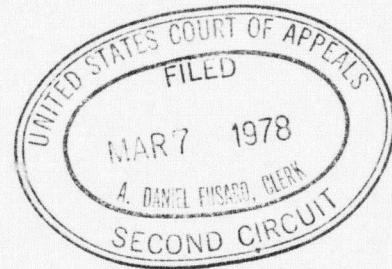
v.

OWNERS MAINTENANCE CORP.,
Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570



PAGINATION AS IN ORIGINAL

I N D E X

Chronological List of Relevant Docket Entries.....	II
Excerpts from the transcript of testimony in the proceedings.....	1
Complaint and Notice of Hearing, Dated November 29th, 1976.....	189
Respondent's Answer to the Complaint, Recieved December 27, 1976.....	192
Motion to Correct Transcript, Dated May 12, 1977.....	193
Administrative Law Judge's Decision, Dated June 16, 1977.....	196
Respondent's Exceptions to the Administrative Law Judge's Decisior, Dated July 11, 1977.....	209
Board's Decision and Order, Dated September 19, 1977.....	215
General Counsel's Exhibit #3	217
" " #4	219
#5	222
" " #6	226
" " #7	227
" " #10	235
" " #11	236
" " #16	239

II

(Continuation)

Charging Party's Exhibit #1.....	240
Letter to George Marlin, Contract Arbitrator from Union members, Dated August '0, 1975 (Respondent's Exhibit A).....	243
Respondent's Exhibit E.....	244

III

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of : Owners Maintenance Corp.

Case No. : 2-CA-14044

12.30.75 Charge filed

11.29.76 Complaint and Notice of Hearing, dated

12.21.76 Respondent's Answer, dated

2.1.77 Order Rescheduling Hearing, dated

2.22.77 Respondent's Motion for Summary Judgment and Brief in Support
of its Motion, dated

2.25.77 Board's Order Denying Motion for Summary, dated

3.1.77 Hearing opened

3.4.77 Hearing closed

5.12.77 General Counsel's Motion to Correct Transcript, dated

6.16.77 Administrative Law Judge's Decision, issued

7.11.77 Respondent's Exceptions to the Administrative Law Judge's
Decision, received

9.19.77 Decision and Order issued by the National Labor Relations Board

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Second Region

----- x

In the Matter of: :

OWNERS MAINTENANCE CORPORATION :

Respondent :

-and- : Case No.

THOMAS SOTO :2-CA-14044

Charging Party:

----- x

26 Federal Plaza - Room 3614
New York, New York
Tuesday, March 1, 1977

The above-entitled matter came on for hearing, pursuant
to order, at 12:15 p.m.

BEFORE:

LOWEL GOERLICH, Administrative Law Judge

APPEARANCES:

PETER GILLISPIE, ESQ. 26 Federal Plaza, New York,
New York, appearing on
behalf of General Counsel

JAMES BERG, ESQ. 292 Madison Avenue, New York,
New York, 10017, appearing on
behalf of the Respondent

ALLAN LEVINE, ESQ.
and
EVA CAREY, ESQ. c/o New York Civil Liberties
Union, 845 5th Avenue, New
York, New York, 10011,
appearing on behalf of the
Charging Party

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESSES

DIRECT CROSS REDIRECT RECROSS

Thomas Soto 13 82 125 133

EXHIBITS

FOR IDENTIFICATION IN EVID NCE

General Counsel's:

1-A thru I	--	5
1-M	--	5
2	19	33
3	31	34
4	40	42
5	49	58
6	58	72
7	58	72
1-N	73	74

Charging Party's:

1	77	78
---	----	----

1 MR. BERG: No, Your Honor.

2 MR. GILLISPIE: Your Honor, I have prepared a short
3 opening statement. If Your Honor would find it helpful --

4 JUDGE GOERLICH: Since we did have a lengthy pre-trial
5 conference before we went on the record this morning, I know
6 what the issues are before me. I see no useful purpose in
7 your making an opening statement. Indeed, if you wish to
8 it is your right.

9 MR. GILLISPIE: I won't insist on making an opening
10 statement, Your Honor.

11 JUDGE GOERLICH: Very well, you may call your first
12 witness.

13 MR. GILLISPIE: At this time, General Counsel calls
14 Thomas Soto.
15 Whereupon,

16 THOMAS SOTO
17 was called as a witness by and on behalf of the General
18 Counsel, having first been duly sworn by the Administrative
19 Law Judge, was examined and testified as follows:

20 JUDGE GOERLICH: State your name and address for the
21 record, please.

22 THE WITNESS: Thomas Soto, 46 West 21st Street, New
23 York, New York 10010.

24 JUDGE GOERLICH: Is it Tom or Thomas?

25 THE WITNESS: Thomas.

1 JUDGE GOERLICH: What is your age?

2 THE WITNESS: 34.

3 JUDGE GOERLICH: There may be times during this pro-
4 ceeding when I will ask a witness a question. If I ask a
5 witness a question, any party to the proceeding may state
6 an objection to that question. If an objection is made to
7 the question, I will treat such objection as if a party
8 had objected to another party's question. If there is no
9 objection to the question, immediately, then the objection
10 to the question will be deemed to be waived.

11 If at any time during this proceeding, I express an
12 opinion on one of the issues, such opinion that I have
13 expressed does not reflect what my decision will be.

14 If any of the parties wish to examine and brief their
15 arguments, they may do so.

16 You may proceed, Mr. Gillispie.

17 MR. GILLISPIE: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 Q (By Mr. Gillispie) Mr. Soto, where do you work?

20 A I am not employed.

21 Q Where were you last employed?

22 A Owners Maintenance Company.

23 Q When I refer to Owners Maintenance Corporation from now
24 on, it shall be referred to as O.M.C.

25 When was your last day with O.M.C.?

1 A July 3, 1975.

2 Q Why did you stop working for O.M.C.?

3 A I was fired.

4 Q Where had your work location been?

5 A At 1 Penn Plaza.

6 Q What type of work had you done?

7 A I was a porter.

8 MR. BERG: Your Honor, I would like to object. The
9 witness is going into unnecessary details. Unless he is
10 going to give evidence as to why this particular award that
11 was made is repugnant to the Act. The issues is not a matter
12 that was not heard and resolved by an arbitrator. It took
13 seven days in arbitration.

14 MR. GILLISPIE: Your Honor, I cite Illinois Bell
15 Telephone at 221 NLRB 989, and Dreis & Crump Manufacturing
16 at 221 NLRB 309 which was later affirmed by the Circuit
17 Court.

18 Counsel for General Counsel wishes to elicit substantial
19 testimony from Mr. Soto about the kind of activities he
20 engaged in in detail, but simply not a particular facet of
21 the arbitrator's award and finding. That will give Your
22 Honor a basis to test the conclusion that the arbitrator
23 drew from the evidence in this matter in order to determine
24 whether or not the conclusions are supported by the evidence.

25 JUDGE GOERLICH: Mr. Berg, we have a question here as to

1 The Board could then reverse and find an 883. You may go
2 into these matters.

3 MR. GILLISPIE: Thank you, Your Honor.

4 Q (By Mr. Gillispie) Mr. Soto, you testified that when
5 you worked at 1 Penn Plaza it was as a porter. What were
6 your job duties precisely?

7 A I cleaned the bathrooms, I constantly replaced toilet
8 tissues, I saw that the toilets were cleaned and possibly
9 maintained a number of bathrooms, kept them clean throughout
10 the building.

11 Q In all, about how long did you work for O.M.C.?

12 A From May of 1973, to July of 1975, about two and a half
13 years -- roughly.

14 Q While you were working for O.M.C., did you work at any
15 location other than 1 Penn Plaza?

16 A No.

17 Q I would like to call your attention to your firing.
18 Who informed you that you being fired?

19 A Mr. Roy LeClaire.

20 Q When did Mr. LeClaire speak to you?

21 A The afternoon of July 3rd, he called myself, and Mr.
22 Veve into his office and informed us that he had been in-
23 structed to fire myself and Mr. Veve.

24 Q He received instructions from whom?

25 MR. BERG: I object to that. It is hearsay.

1 JUDGE GOERLICH: Overruled.

2 A He said to me that he had received a letter from Mr.
3 Phil Cumsz which included our checks. He was instructed to
4 fire us -- and it was a surprise to him.

5 Q Can you tell me if Mr. Cumsz is present today?

6 A Mr. Cumsz is sitting right next to Mr. Berg (indicating).

7 Q Did Mr. LeClaire explain to you actually why you were
8 being fired?

9 A He did mention the falsification of records.

10 Q At the time you were fired, did you know what records
11 Mr. LeClaire might have been referring to?

12 A No, I did not.

13 Q Have you since learned what records Mr. LeClaire was
14 referring to?

15 A Yes, I have.

16 Q When did you find that out?

17 A During the arbitration proceedings -- I was made aware
18 of what the records were.

19 Q Which records were in question?

20 A My job application at 1 Penn Plaza for Owners Mainte-
21 nance Corporation.

22 MR. GILLISPIE: I would like to have this marked as
23 General Counsel's Exhibit 2 for identification.

24 (Above-referred to document
25 was marked General Counsel's
Exhibit 2 for identification.)

1 Q (By Mr. Gillispie) I ask you to look at General
2 Counsel's Exhibit 2. Do you recognize the document?

3 A I do.

4 Q What is it?

5 A It is a copy of my application for employment that I
6 filled out with Owners Maintenance.

7 Q Is there anything on the application which is in fact
8 incorrect?

9 A Yes.

10 Q What?

11 A It is the question which reads, have you ever been
12 arrested except for traffic violations. Which I answered,
13 "No."

14 Q That is not the correct answer to that question?

15 A No, it is not.

16 Q Can you tell me how many times you have been arrested
17 or cited for an offense?

18 A I was arrested twice and received a summons once.

19 Q I would like you to tell us why you were arrested.
20 Mr. Soto, why were you arrested the first time?

21 A Ten years ago, in 1967, I was arrested and charged with
22 possession of marijuana.

23 Q Tell us just briefly the circumstances of that arrest.

24 A I visited a friend of mine. About ten minutes after I
25 visited him, the police entered his apartment -- and everyone

1 else that was in it and I was just simply charged for being
2 there.

3 Q Was there a disposition if any of that charge against
4 you?

5 A It was dropped.

6 Q You mentioned that you had been arrested twice. What
7 was the second arrest for?

8 A There was a labor picket line outside a Nathan's store
9 on 8th Street and 6th Avenue which I joined along with
10 hundreds of others in the neighborhood. I lived in that
11 neighborhood. At a point, the police came in and arrested
12 a large number of the people who were picketing, including
13 union members as supporters -- and I was one of those
14 arrested.

15 Q What was the disposition of that arrest?

16 A I paid a \$25 fine for disorderly conduct.

17 Q How did you come to pay that fine?

18 A The state prosecuting D.A. offered everyone a deal.
19 He said, listen, why don't you just plead guilty to dis-
20 orderly conduct. Plead guilty to this.

21 Q Everyone that was arrested pleaded guilty?

22 A Yes, I did.

23 Q Mr. Soto, you said there were three arrests. What was
24 the other offense?

25 A I was issued a Vera summons for trespassing. It was

1 later dropped.

2 Q Again, can you briefly give us the circumstances
3 surrounding this arrest?

4 A It was a Viet Nam job fair. I am a Viet Nam veteran.
5 The job fair was to give employment to Viet Nam veterans.
6 I was seeking a job along with thousands of veterans. At a
7 point in the fair, a number of veterans began chanting, we
8 want jobs. The police were brought in. A number of veterans
9 were asked to leave. The summonses were issued.

10 Q When did you fill out that job application that has
11 been marked as General Counsel's Exhibit 2?

12 A I filled it out on May 7, 1973, about a week after I
13 was employed.

14 Q You filled it out after you had been employed?

15 A Yes.

16 Q During the period of your employment, Mr. Soto, did
17 anyone ever comment on the quality of your work?

18 A On many occasions, Mr. Jack McMannus, Mr. Phil Cumsz,
19 Mr. Roy LeClaire, and Mr. Enright, all indicated to me that
20 I was a good worker.

21 MR. BERG: I object to this. All the statements are
22 attributed to individuals that are not here to testify to
23 these statements, with the exception of Mr. Cumsz.

24 JUDGE GOERLICH: I will exclude all of it, except as
25 to those that are supervisors of this company.

1 Q (By Mr. Gillispie) Mr. Soto, let me direct your
2 attention first to Mr. McMannus. When he commented to you
3 about the quality of your work, when was that?

4 A Back in June of '73 -- he brought me into his office.
5 He said that I was a good worker. That I had a good work
6 relationship with the other men. I did my job -- and he
7 offered me the job of job leader which was a position like
8 that of acting foreman. This offer was based on my good
9 work.

10 Q You say Mr. McMannus offered you a position.

11 MR. BERG: I renew my objection.

12 JUDGE GOERLICH: What is the basis of your objection,
13 Mr. Berg?

14 MR. BERG: Mr. McMannus is no longer employed by the
15 company.

16 A I was speaking about at that time.

17 MR. BERG: He was a supervisor at that time.

18 JUDGE GOERLICH: I will permit that to go into evidence.

19 MR. GILLISPIE: At the time Mr. Soto was employed, he
20 was a supervisor.

21 MR. BERG: He was a supervisor.

22 MR. GILLISPIE: At the time that he complimented Mr.
23 Soto about his work, he was a supervisor.

24 Q (By Mr. Gillispie) Mr. Soto, did Mr. LeClarie speak
25 to you about the quality of your work?

1 A On several occasions after he became the supervisor.

2 Q Just give us the date, Mr. Soto?

3 A O.K. -- approximately I would say -- in early '75.

4 Q At that point in time, what did Mr. LeClaire do for
5 O.M.C.?

6 A He was a supervisor.

7 Q He was a supervisor of what?

8 A He was a supervisor of the day porters.

9 Q Was he your supervisor personally, if you know?

10 A Yes, he was responsible for the day porters and matrons
11 on the day shift and nights at 1 Penn Plaza.

12 Q When you say he was responsible, what did he do?

13 A He did the hiring. He did the firing. He was the person
14 who organized the jobs at that site.

15 Q Who was it that made up your work schedules at that
16 time?

17 A He made up the work schedules.

18 MR. GILLISPIE: Mr. Berg, is it possible to stipulate
19 that Mr. LeClaire was a supervisor at the time in question?

20 MR. BERG: Yes.

21 MR. GILLISPIE: Mr. Cumsz, who is with you?

22 MR. BERG: Yes.

23 Q (By Mr. Gillispie) When did Mr. Cumsz speak to you?

24 A Mr. Cumsz came to the building almost every day -- and
25 especially when I received my position as a job leader man,

1 which is like an acting foreman position. Mr. Cumsz would
2 engage me in conversation almost daily. He told me in fact
3 that since I took over the position the building was cleaner,
4 and the men were producing -- and he would raise this kind
5 of conversation with me.

6 Q What was Mr. Cumsz' position at that time?

7 A I think he was in charge of the supervisors in that he
8 was the direct boss of Mr. McMannus and now Mr. LeClaire.

9 MR. GILLISPIE: Is it possible to stipulate to that?

10 MR. BERG: Mr. Cumsz is the director of operations for
11 the company.

12 MR. GILLISPIE: He is a supervisor within the meaning
13 of the Act.

14 MR. BERG: We would stipulate that Mr. Cumsz is a super-
15 visor within the meaning of the Act. We would not stipulate
16 with respect to Mr. LeClaire and whoever it was that the
17 other individual was that you have mentioned.

18 MR. GILLISPIE: You are indicating that you have revoked
19 the stipulation that you have made previously.

20 MR. BERG: The stipulation that I made previously was
21 that he was a supervisor within the meaning of our company,
22 but not within the meaning of the Act. No, he had no right
23 to fire.

24 Q (By Mr. Gillispie) Mr. Soto, did Mr. LeClaire and Mr.
25 Cumsz make certain comments to you about the quality of your

1 work?

2 A Yes, they did.

3 Q Do you recall any of the specific comments that were
4 made to you?

5 A With respect to Mr. McMannus, in June of '73, about a
6 month or two after I was employed, he pulled me into his
7 office, and said to me, that the position of job leader man
8 was open, and he considered me a very good worker, and I had
9 gained knowledge in a very short time of the specifics of
10 cleaning. He said, at that time, he had been in contact
11 with Mr. Cumsz about offering me this job of job leader.

12 Q Mr. Soto, I believe you used the phrase, called you
13 into his office. Can you describe who was at that meeting
14 beside yourself?

15 Was that an adverse situation?

16 A No. He asked me to come into his office. He sat me
17 down and spoke to me.

18 Q After this, did O.M.C. ever place you in a position of
19 any added responsibility?

20 A Yes, I was made what you call job leader man. Given
21 ten dollars wage incentive, and was responsible for the
22 organization of the work at the building.

23 Q When you got that job, were you given any new equipment
24 of any sort?

25 A I had a beeper. I had sets of keys to Mr. McMannus'

1 office or Mr. LeClaire's office. When they weren't there,
2 I covered for them.

3 Q You had a set of keys for those offices?

4 A Yes.

5 Q How long did you hold that position, Mr. Soto?

6 A I held it I believe, until May of '74 -- around there
7 is sometime when I received that position.

8 Q After you received that position, what job did you go
9 to?

10 A I became the bathroom man.

11 Q During the term of your employ at 1 Penn Plaza, did you
12 become a member of Local 32 B, Service International Union?

13 A I did.

14 Q For how long have you been a member of that union?

15 A From the end of May -- early June until the present.

16 Q You're still a member of that union?

17 A I am still.

18 Q Have you been active with respect to that union?

19 A Yes, I have.

20 Q Have you held any office, union position?

21 A I was a shop steward when I was fired from the job.

22 Q When were you officially afforded that position as a
23 shop steward?

24 A I have a union card that was issued to me on May 1st of
25 '75.

1 Q There was an election shortly before that. That was
2 about May 1, 1975?

3 A That's right. That's when the card was issued.

4 Q How did you originally come to that position of shop
5 steward?

6 A The day crew of porters with whom I worked had been
7 speaking about the question of electing the shop steward.
8 Mr. Veve, Mr. Calabrese, Mr. Rivera, Mr. McNally, Mr. Holmes
9 and myself had conversations with each other during the lunch
10 hour. We scheduled a meeting in our locker room, and we
11 had discussions, and I was unanimously elected shop steward.

12 Q Was anyone from the company at that meeting that you
13 recall?

14 A Mr. Nelson Timmons, the acting foreman also participated.

15 Q What was Mr. Timmons' duties. What did he do?

16 A He and Mr. LeClaire --

17 Q I want you to only tell me the things you yourself have
18 personal knowledge of, if you can.

19 JUDGE GOERLICH: At that time.

20 A He is Mr. LeClaire's informer. He is like a foreman.
21 He checks on people to see if they are doing their job. He
22 can issue a complaint. He can witness these things -- and
23 can also perform -- he can recommend punitive action which
24 he has. He did that. He has no assigned work. He works
25 as one of the foreman.

1 Q Who tells the other porters what work to perform?

2 A Mr. Timmons does.

3 Q At this time, it would have been Mr. Timmons?

4 A Yes.

5 Q If porters don't do the work that is assigned to them,
6 who would discover that?

7 A Mr. Timmons.

8 Q Tell me, Mr. Soto, have you been active in matters
9 concerning the union? If so, what kinds of things generally
10 have you done?

11 A I have been active concerning the union. Fairly --
12 very frequently I have attended union meetings. I have
13 visited the union to submit grievances. To give support to
14 others that have wanted to submit grievances to our union.
15 I have circulated copies of our medical benefits, our rights,
16 and talked to members of the union. On dozens of occasions,
17 I have inquired about alleged grievances, -- and I have
18 participated in arbitration proceedings. I have after work,
19 done general union work. I have distributed union leaflets
20 on the job.

21 Q Mr. Soto, give us some idea what period of time you
22 engaged in that form of activity?

23 A From the time I was hired to the time I was fired, I
24 engaged in different activities for the mutual benefit of
25 all the union members.

1 A Yes.

2 Q With respect to Mr. McNally, did he ever have a problem
3 with his employment that you personally know of?

4 A Yes.

5 Q Would that have been in December of 1973?

6 A Roughly.

7 Q What was the problem?

8 A He was -- he became injured, and disabled, and required
9 hospitalization for a few months, and Mr. McMannus informed
10 me that he had to replace Mr. McNally.

11 Q At that time, what was your position?

12 A I was a job leader man.

13 Q Thank you, Mr. Soto. You can continue. What happened
14 after that?

15 A Myself, Mr. Veve, Mr. Andy Calabrese, who was a shop
16 steward visited the union. I believe we had talked to Mr.
17 McNally by phone, and made him aware that Mr. McMannus wanted
18 to replace him. Also, on at least three -- four occasions,
19 I called Mr. McNally to inform him of any further discussions
20 with Mr. Andy Dunlie. I personally called Mr. McNally's
21 doctor and was informed about Mr. McNally's condition -- how
22 he improved -- and subsequently, when Mr. McNally was released
23 from the hospital, he was returned to work.

24 Q I would like to direct your attention to Mr. Calabrese.
25 Did Mr. Calabrese ever have a problem with his employment?

19

1 A Yes.

2 Q When would that have been?

3 A I believe that was around June of '74.

4 Q Do you recall what that problem was?

5 A He was fired by Mr. Timmons.

6 Q Do you know why he was fired?

7 A He was fired because Mr. Timmons alleged that he couldn't
8 find him at inspection. That was the time Mr. Timmons was
9 in the building.

10 Q What did you do if anything concerning the firing of
11 Mr. Calabrese?

12 A Mr. Jaime Veve and myself, Mr. Rivera and Mr. McNally
13 and other workers in the day crew, we had a meeting in the
14 locker room at that time, and we discussed how we could come
15 to the aid of our shop steward who we knew had been unjustly
16 fired, and at that point we discussed that we all would write
17 letters to be introduced into evidence on behalf of Mr.
18 Calabrese when his hearing and subsequent arbitration took
19 place.

20 MR. GILLISPIE: I would like to have this marked as
21 General Counsel's Exhibit 3 for identification.

22 (Above-referred to document
23 marked General Counsel's
Exhibit 3 for identification.

24 Q (By Mr. Gillispie) Mr. Soto, I show you this document
25 which has been marked as General Counsel's Exhibit 3 for

MR. GILLISPIE: That doesn't demonstrate the extent of his union activities, Your Honor.

MR. BERG: I object on the ground that it is irrelevant.
As a rule, that particular committee which is involved does
not accept any letter. They only accept direct testimony.
Have you no idea what --

JUDGE GOERLICH: I won't accept this letter for the truth or falsity of the statement therein, but I will accept it for the fact that this witness did write it and it had something to do with his activities as a union partison.

MR. GILLISPIE: Thank you, Your Honor.

(Above-referred to document previously marked General Counsel's Exhibit 3 for identification, was received in evidence.)

Q (By Mr. Gillispie) Mr. Soto, you indicated that the employees at the building at a meeting discussed with you the Calabrese incident. How did this meeting come about?

A Mr. Veve and myself were the remaining most -- labor
ion members who were most actively involved. We initiated
and discussed this with the other employees, and called for
a meeting during our lunch hour, and everyone attended that
meeting.

JUDGE GOERLICH: What was the date of that?

1 A The meeting was roughly mid-June -- mid-June of '74.

2 Q When did that meeting occur in relation to Mr. Calabrese's
3 firing?

4 A Right after his firing.

5 Q Right after? How long after, approximately?

6 A Approximately -- a week or so within the first couple
7 of days.

8 Q Mr. Soto, what was the result of all of your activities
9 on behalf of Mr. Calabrese?

10 A I first interviewed the day crew. They presented
11 themselves and made themselves available to testify on behalf
12 of Mr. Calabrese at the Joint Industrial Grievance Committee.

13 Q You mean personally available?

14 A I was personally available and later the arbitrator
15 proceeded to interview the crew. Mr. George Marlin took
16 the testimony. Mr. Calabrese was ultimately reinstated into
17 the building with all his past seniority.

18 Q Was he awarded back pay?

19 A No, he was not.

20 Q How many letters of this type would you say were written?

21 A I believe six or seven were written.

22 Q How many did you present to the arbitrator?

23 A All of them -- I presented them to the arbitrator myself.

24 Q You presented these letters to the arbitrator?

25 A I did.

1 Q Where did you present those letters physically? Do
2 you recall?

3 A These were in the hearing room where the arbitration
4 occurred before Mr. Marlin -- before Mr. Berg, Mr. Timmons.

5 Q Do you recall who was physically present in the room?

6 A Mr. Berg, Mr. Timmons -- Mr. Marlin was present. Mr.
7 Joe Corrigan, attorney for the union, was present.

8 Q Mr. Soto, I want to ask you a further question on that
9 score of who was physically present.

10 How did you give the letter to the arbitrator? Do you
11 recall whether or not you gave it to him secretively, or
12 incidentally, how did you give it to him?

13 A He was sitting right in front of me. I was sitting
14 right next to Mr. Calabrese. I took the letters, gathered
15 them together at one point, and handed them to him. The
16 letter, I picked it up -- I showed it to him.

17 Q That is what you were testifying about before Mr.
18 Marlin?

19 A Yes.

20 Q Mr. Soto, has your recollection been refreshed with
21 respect to George Marlin, whom the hearing was held before?

22 A He is also the arbitrator who made the award in our
23 case.

24 MR. BERG: I will stipulate for the record that he is
25 the contract arbitrator.

AFTERNOON SESSION

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

JUDGE GOERLICH: The trial will be in order. You may proceed, Mr. Gillispie.

MR. GILLISPIE: Thank you, Your Honor.

Q (By Mr. Gillispie) Mr. Soto, let me draw your attention as to where we have left off, if I may. My recollection is that we had discussed an incident concerning Mr. Calabrese. I then went on to ask you if you recalled any incident which came on sometime after that. I think you answered that yes. Am I correct, do you recall if there was such an incident?

A Yes, I do.

Q What incident is that?

A Shortly after Mr. Calabrese was fired, the company posted a bulletin that anybody who was caught taking a relief period or coffee break, would be subject to immediate dismissal.

Q Had there been coffee breaks at 1 Penn Plaza before this incident and the resulting bulletin?

A We had a practice of coffee breaks every single day that I was employed -- then.

Q When the coffee breaks occurred, I am sorry, did you want to ask a question?

JUDGE GOERLICH: I was going to ask the same question you asked him, when the coffee breaks occurred? I was going to ask him when the incident took place.

1 A Shortly after June -- around the same time.

2 JUDGE GOERLICH: 1975?

3 A No -- June '74.

4 MR. BERG: Your Honor, I would like to object to the
5 testimony concerning this incident. It was brought before
6 the arbitrator. The arbitrator resolved the issue. There
7 is no point in going into it any further.

8 MR. GILLISPIE: I do wish to test the arbitrator's
9 decision. There was testimony at the arbitration.

10 MR. BERG: Your Honor, this is a waste of time for all
11 of us.

12 MR. GILLISPIE: Your Honor, counsel for General Counsel
13 has no intention of going into the merits of this. What
14 counsel for General Counsel is interested in is when it
15 occurred. Is it possible to stipulate concerning this.

16 JUDGE GOERLICH: Off the record.

17 (Discussion held off the record.)

18 JUDGE GOERLICH: On the record.

19 MR. GILLISPIE: May I continue with my questions?

20 JUDGE GOERLICH: You may.

21 Q (By Mr. Gillispie) How often did coffee breaks occur
22 when you were working prior to the time that you referred to
23 in late June?

24 A One twenty-minute coffee break in the morning, one
25 twenty-minute coffee break in the afternoon.

1 Q When is it that the company posted a notice stopping
2 coffee breaks?

3 A Shortly after two or three weeks -- after Mr. Calabrese
4 was fired. We were treated -- the company was bearing down
5 on us for our support of Mr. Calabrese.

6 Q When the coffee breaks were stopped, what did you do?

7 A Myself, Mr. Veve, Mr. Minafield, Mr. Moheca -- all the
8 day porters, we held the meeting which was ordered by Mr.
9 Veve and myself. We collectively decided that I would submit
10 a grievance on behalf of all the day porters on the basis
11 that it was a past practice and it couldn't be withdrawn.

12 Q After you submitted the grievance, did the employees
13 do anything more?

14 A We had a meeting downstairs in the locker room -- again,
15 initiated by Mr. Veve and myself, and we decided that we
16 would write letters to be introduced as evidence in the
17 proceedings concerning the coffee breaks. I wrote a letter
18 and every other man wrote a letter.

19 MR. GILLISPIE: I would ask that this be marked as
20 General Counsel's Exhibit 4 for identification.

21 (Above-referred to document
22 was marked General Counsel's
23 Exhibit 4 for identification.)

23 JUDGE GOERLICH: On the record.

24 Q (By Mr. Gillispie) Mr. Soto, I have given you a document
25 marked for identification as General Counsel's Exhibit 4.

1 I would ask you to look at it now and see if you recognize
2 it?

3 A I do.

4 Q What is it, Mr. Soto?

5 A It is a letter I wrote sometime in late June or early
6 July of 1974, which I presented to the Joint Industrial
7 Grievance Committee along with other letters written by the
8 men in support of our contention that we had a right to the
9 coffee breaks. This letter was later submitted at the
10 arbitration I presented it about the coffee breaks before
11 the arbitrator, Mr. George Marlin. This was all done in
12 support of our contention. This was submitted by myself
13 and six other signed it.

14 Q With respect to the arbitration, were these letters
15 accepted?

16 A They were accepted. The union's counsel had copies of
17 them.

18 Q What were the mechanics of how you submitted the letters?

19 A I had all those in one batch. I was at the arbitration.
20 Mr. Timmons, Mr. Berg, Mr. Corrigan were there. I was in
21 front of the table where Mr. Marlin was. I was arguing the
22 grievance. I submitted all of this to the arbitrator, then
23 I picked them up and handed them to him.

24 MR. GILLISPIE: At this time, counsel for General
25 Counsel requests that General Counsel's Exhibit 4 be received

1 A When the notice was posted -- shortly after Andy
2 Calabrese was fired. The different union brothers were
3 rather upset. Mr. Veve and myself were the most conscious
4 remaining union workers after Mr. Calabrese was fired.
5 We discussed it. Most of what was put forth was the idea
6 of having a meeting. When lunch time occurred, we all came
7 together in the locker room, and we had a discussion, and
8 we agreed that we would write the letter and make ourselves
9 available to appear at a grievance proceeding in support of
10 our claim.

11 Q Mr. Soto, is it a fact that you are familiar with a
12 man by the name of Guzman?

13 A Yes, I am.

14 Q Who is Mr. Guzman?

15 A Mr. Guzman was a guard who was a member of Local 32 B
16 that was the local in our building.

17 Q Was there something that occurred with respect to
18 Guzman?

19 A Yes.

20 Q What was that?

21 A In -- if I am correct, -- in April of 1975, Mr. Guzman
22 was laid off out of seniority. That is, there were other
23 employees who had less seniority than Mr. Guzman, and they
24 were not touched, and Mr. Guzman was laid off. He -- con-
25 sequently to his being laid off, he got in touch with Mr.

1 Veve and myself. He was rather upset -- and asked what he
2 could do. He didn't speak much English. We looked at his
3 contract after work. We met with him and looked at his
4 contract. I found the clause pertaining to layoffs, which
5 stated clearly that if there are to be any layoffs, they
6 are to be started off by the man with the least seniority.

7 Q Mr. Soto, I don't mean to interrupt you.

8 The arbitration that was entered into, did you personally
9 get involved in any of the details?

10 JUDGE GOERLICH: What does that have to do with it?

11 A We went to the union.

12 JUDGE GOERLICH: Who personally went with you?

13 A I went to the union along with Mr. Guzman, and Mr. Veve.
14 We wanted to enter a grievance.

15 Q Did Mr. Guzman have to file a grievance on his own?

16 MR. BERG: I object, he is testifying about what Mr.
17 Guzman did or did not do.

18 JUDGE GOERLICH: I will sustain the objection.

19 Q What did Mr. Guzman say when he first came to you?

20 A He wanted to know what had happened to him. If his
21 being laid off was right.

22 JUDGE GOERLICH: Was the grievance processed?

23 A Yes, it was.

24 JUDGE GOERLICH: Did you participate in the processing
25 of the grievance?

29

1 A Yes, I did.

2 JUDGE GOERLICH: What did you do with respect to when
3 you went to the union with Mr. Guzman?

4 A I spoke to the delegate. I interpreted -- translated
5 from Spanish to English -- and he was subsequently reinstated
6 thereafter.

7 JUDGE GOERLICH: Did you at any time meet with the
8 company over it?

9 A No.

10 JUDGE GOERLICH: Let's proceed to the next issue.

11 Q (By Mr. Gillispie) Was that the finish of Guzman's
12 problem?

13 A No, it was not.

14 Q What happened after that?

15 A Shortly after that, Mr. Guzman was scheduled for
16 vacation time. He came down and told me the company would
17 only give him two days vacation, and said that during the
18 time that he had been laid off he had lost seniority therein,
19 and was not entitled to the four weeks vacation that would
20 have been coming to him if he had not been laid off.

21 Q What did Mr. Guzman do about that?

22 A This time there was an uproar in the building. All nine
23 of us including Mr. Veve and myself who organized the
24 delegation along with Mr. Guzman, Mr. Carlos Rivera, Mr.
25 Rivera's wife, Ulyses Gonzalez went to the union. The group

1 spoke with Mr. Andy Dunlie, the delegate. I submitted the
2 grievance shortly thereafter. The grievance was processed,
3 and Mr. Guzman was given his four week's vacation.

4 Q Mr. Soto, how did all those employees come together
5 in a group? How did that happen?

6 A Mr. Veve and myself, on our lunch hour, talked to
7 different employees. We got the agreement of everybody that
8 we would meet outside the building at 4:00 to go up to the
9 union together.

10 Q What time do you finish work?

11 A 4:00.

12 Q No one left work to go to the union?

13 A No, -- there were a number of employees who left at
14 3:30. The others left at 4:00.

15 Q Did anybody leave the job, walk off the job?

16 A No.

17 JUDGE GOERLICH: What day did this incident occur?

18 A This occurred in April of -- no, the second -- only
19 regarding his vacation later after April -- maybe May or June
20 of '75. May, I would say.

21 Q (By Mr. Gillispie) Let me ask you this, Mr. Soto, how
22 long was it between the first time you went to the union
23 and the second time you went to the union?

24 A The time between the first and second times?

25 Q Yes. The time between both grievances?

31

1 dent.

2 From your testimony, it seems at least to me, often
3 people went to the union in a group, rather than just one
4 individual. Why was that?

5 A Well, many of the workers were Spanish speaking, Puerto
6 Rican or Latin Americans, and they spoke broken English. Many
7 of them had never been to the union. Had never really visited
8 the hall. Had never spoken to the delegate. Had never seen
9 copies of the contract. Mr. Veve and myself made certain
10 that they did have a copy read to them. We read it to them
11 and explained it to -- him after he came to the building.

12 So when there was trouble, people would naturally come
13 to Mr. Veve and myself and ask us to accompany them to the
14 union in order to make a charge.

15 JUDGE GOERLICH: Were you the shop steward at that time?

16 A I am sorry, I didn't hear you.

17 JUDGE GOERLICH: Were you shop steward at this time?

18 A I am sorry -- if I understand the question, it was, was
19 I employed during the time that I was a shop steward. I did
20 participate.

21 JUDGE GOERLICH: Go ahead.

22 Q (By Mr. Gillispie) Beside Mr. Guzman and the guard was
23 there any other incident concerning guards that you recall?

24 A Yes.

25 Q Such as what?

1 A Well, in the first week -- in April of 1975, I went to the
2 union with Mr. Andy Corrigan, and Mr. Benjamin Rivera. We
3 went initially to obtain copies of our medical plans, because
4 Mr. Korrea does not speak English very well.

5 JUDGE GOERLICH: Mr. Soto, did you generally tell people
6 about the incidents regarding the union?

7 A Well, we discussed the guard contract that had expired.
8 We did raise that with the delegate.

9 Q (By Mr. Gillispie) Who was the delegate, Mr. Soto?

10 A Mr. Andy Dunlie.

11 Q Who actually did the talking?

12 A I did.

13 Q What was the scope of the conversation with Mr. Dunlie?

14 JUDGE GOERLICH: What was the upshot of that? Did you
15 participate in negotiating a new contract?

16 A Mr. Dunlie instructed myself to go back to the fellows
17 and get a set of demands. Subsequently, the next step was
18 myself and Mr. Veve organized a meeting with a dozen guards
19 at which I wrote the four-page statement of demands.

20 MR. GILLISPIE: I ask that this be marked as General
21 Counsel's Exhibit 5 for identification.

22 (Above-referred to document
23 was marked General Counsel's
24 Exhibit 5 for identification.)

24 JUDGE GOERLICH: What date did this incident occur on?

25 A In April of 1975.

1 JUDGE GOERLICH: What was the date of their termination?

2 MR. GILLISPIE: They were fired in July of 1975, Your
3 Honor.

4 JUDGE GOERLICH: Very well, the Regional Director must
5 have waited a pretty long time before the complaint was set
6 down for hearing.

7 MR. GILLISPIE: Yes, Your Honor, this is the formal
8 letter called a dubo letter which deferred processing of the
9 charges, while the arbitration proceeding was in progress.

10 JUDGE GOERLICH: Very well, go ahead.

11 Q (By Mr. Gillispie) Mr. Soto, I believe and correct me
12 if I am wrong, that you said following your discussion with
13 Mr. Dunlie a number of people got together? Is that correct?

14 A Yes.

15 Q Who got together? What kind of people.

16 A We were all union members. There was Mr. Veve, and
17 myself, who were porters, and about ten or a dozen guards.

18 Q Were there any other persons besides yourself and Mr.
19 Veve who were present at the meeting who were non-guards?

20 A No.

21 Q Other than with the possible exception of yourselves,
22 was there anyone else who was present at that meeting who
23 was an official of the union?

24 A No -- just members of the union.

25 JUDGE GOERLICH: Where did the meeting occur?

1 Q Mr. Soto, were you told that an agreement was reached
2 that day?

3 A He said that they were working on it in the union.

4 JUDGE GOERLICH: What is the materiality about that to
5 this proceeding?

6 MR. GILLISPIE: It has to do with the timing of the
7 union activities. In an 883 where there is an alleged.

8 JUDGE GOERLICH: The fact that it was told to him has
9 no materiality.

10 MR. GILLISPIE: Very well, Your Honor.

11 Q (By Mr. Gillispie) Mr. Soto, aside from these specific
12 incidents to which you have testified, was there any other
13 incidents of this type?

14 A There were many more throughout the employees, there
15 was trouble coming up every couple of weeks -- every two
16 weeks -- every three weeks -- every month.

17 Q Can you give us the name of any of the employees who
18 have been helped by you to file a grievance?

19 A I helped Carlos Hernandez a guard who was being paid
20 straight time for overtime which is a violation of the
21 contract. I helped Teresa De Salvatore, a matron who had
22 her hours cut. I went with her to the union along with Mr.
23 Veve. I wrote a letter on her behalf. It was signed by
24 all the porters. I assisted MR. Johnny Elicin who was laid
25 off. I helped him to try to get his job back.

1 Q Aside from that, Mr. Soto, were there others as well?

2 A There may have been. I helped them to make grievances,
3 and I supported them in having the grievances processed.

4 JUDGE GOERLICH: Did you in any way negotiate the guard
5 contract?

6 A No, I did not.

7 Q Did you do all of these things acting alone?

8 A No. On almost every grievance from the time that Mr.
9 Veve was employed, he became my closest collaborator. Often
10 he initiated the visits to the union hall to process a
11 grievance. He might get a note that there was a problem.
12 He would get hold of the employee and we would get the full
13 information and discuss how to approach the grievance.

14 JUDGE GOERLICH: How were your tactics brought to the
15 notice of the employer?

16 A On occasion, I had an opportunity to raise them with
17 management as a representative of the employees.

18 JUDGE GOERLICH: Did you actually talk to Minafield
19 about the grievance?

20 A Yes. I spoke to Mr. Roy LeClaire on behalf of Mr.
21 Calabrese who wanted the job of freight elevator operator.
22 He was the man with the most seniority. At the time, I went
23 before Mr. Roy LeClaire and told him he was violating the
24 contract by not letting Mr. Calabrese have it.

25 Q When would that have been? Do you recall?

1 A That was very close to my firing.

2 Q Approximately when, if you can't give me a date, at least
3 give me the season.

4 A I would say around June -- around roughly June of '75.
5 Around that time.

6 Q Tell me, did you ever go on vacation?

7 A Yes, I did.

8 Q When were you on vacation most recently, prior to your
9 firing?

10 A About the week before I got fired -- I believe I was on
11 vacation.

12 Q Mr. Soto, did you make any provisions if something were
13 to have happened in terms of which a grievance might have
14 been raised? Were there any provisions for grievances while
15 you were away?

6 16 A I called for a meeting of all of the men prior to my
17 leaving on vacation. Mr. McNally, Mr. Holmes, Mr. Rivera,
18 Mr. Calabrese, Mr. Minafield and Mr. Veve were present, along
19 with the company representative, Mr. Timmons, and I explained
20 to all the fellows that if there was a problem that came up
21 when I left, that they should see Mr. Veve. He would
22 communicate with the union. He would go with them. He
23 would speak to the company. He would cover the shop while
24 I was gone.

25 Q Mr. Soto, on a slightly different topic, you mentioned

1 that from time to time you spoke with a person in management,

2 Mr. Cumsz. How often did you speak to Mr. Cumsz?

3 A Often.

4 Q How often, Mr. Soto?

5 A Well, -- when I had occasion to be the job leader, then
6 I was responsible for the cleaning of the building during
7 the day. I spoke to Mr. Cumsz just about every morning
8 concerning the maintenance of the building. Concerning
9 where everyone was working. Concerning the higher productivity
10 that had been brought about through my reorganization for the
11 work.

12 Q Did you come to speak to him more frequently prior to
13 your firing?

14 A No. On some occasions, less frequently. But on some
15 occasions, I had that time -- I had raised with him that we
16 have not any black porters. I felt there was discrimination
17 used in the hiring practices because there was relatively --
18 they were hiring white men. There were blacks as well as
19 Puerto Ricans that had submitted applications before those
20 of the the men that were hired. They had not been called to
21 work. He was rather outraged that I raised such a question.
22 He said that the company had a right to hire whoever they
23 wanted.

24 Q Mr. Soto, I just want to briefly direct your attention
25 to the period of time after your firing, if I might, Your

1 JUDGE GOERLICH: Are those the documents that you passed
2 that we have been talking about here?

3 A Yes.

4 JUDGE GOERLICH: Very well.

5 Q Are both those documents the ones that you distributed?

6 A Well -- the first one was distributed.

7 JUDGE GOERLICH: Where were they both distributed?

8 A At 1 Penn Plaza.

9 JUDGE GOERLICH: Thank you. Where at 1 Penn Plaza?

10 A In front of the building on 34th Street on the sidewalk.

11 Q Where is that in relation to Pennsylvania Station, the
12 railroad terminus?

13 A On the other side it is a block away.

14 Q Were you at the front door of the building or on the
15 sidewalk?

16 A On the sidewalk right in front of this main entrance.

17 Q Why did you distribute those things there?

18 A Those leaflets stated that there were threats to workers
19 and that workers had been fired. I had been fired on the
20 July 4th weekend. It had been kept from the workers. I was
21 trying to enlist their support in the arbitration proceeding.
22 I wanted them to call. I wanted them to obtain this telephone
23 number. I wanted to bring them forth as witnesses at the
24 arbitration proceeding.

25 Q Mr. Soto, the single-paged leaflet, did anyone help you

39

1 pass them out?

2 A Mr. Veve passed things out.

3 Q Were these (indicating) distributed?

4 A Yes.

5 Q What was the phone number that was referred to?

6 A That was my personal home number at the time.

7 MR. GILLISPIE: Thank you, Mr. Soto.

8 JUDGE GOERLICH: Are you offering the exhibits?

9 MR. GILLISPIE: I would move that the exhibits be marked
10 for identification as General Counsel's 6 and 7 respectively.
11 in evidence.

12 JUDGE GOERLICH: Any objection?

13 MR. LEVINE: No objection, Your Honor.

14 MR. BERG: No, Your Honor.

15 JUDGE GOERLICH: The exhibits will be received in evidence.

16 (Above-referred to exhibits
17 previously marked General
18 Counsel's Exhibits 6 and 7
for identification, were
received in evidence.)

19 JUDGE GOERLICH: Mr. Levine, do you have any questions
20 for the witness?

21 MR. LEVINE: I have some questions for the witness.

22 (Off the record discussion.)

23 JUDGE GOERLICH: On the record.

24 You may proceed, Mr. Levine.

25 Mr. Gillispie, did you get service on the union? This

1 MR. LEVINE: No objection.

2 MR. BERG: No objection.

3 JUDGE GOERLICH: Hearing no objection, they may be
4 admitted in evidence.

5 (Above-referred to exhibit
6 previously marked General
7 Counsel's Exhibit 1-N for
8 identification, was received
9 in evidence.)

10 JUDGE GOERLICH: Go ahead, Mr. Levine.

11 Q (By Mr. Levine) Mr. Soto, I am going to address myself
12 to two main issues in your testimony. One is to discussing
13 you employment application. The second is, were the arrest
14 charges, "dropped", was it dismissed immediately?

15 A Yes.

16 Q Did you testify that you had a conversation with Mr.
17 Tommy McNally that arose in December of 1973? Is that right?

18 A Yes, I did.

19 Q When is it your recollection that Mr. Veve was employed?

20 A I think around February of '74.

21 Q You are indicating that he had accompanied you to the
22 union with regard to the McNally matter?

23 A Yes. I believe it was Mr. Veve who accompanied me to the
24 office of the union when I made that other --

25 JUDGE GOERLICH: Mr. Soto, prior to your discharge, did
the company ever give you the opportunity to discuss with
them the matters which are contained in your application?

T#8

41

1 A No.

2 JUDGE GOERLICH: Very well.

3 Q While you were employed at 1 Penn Plaza, did you have
4 occasion to discuss company policies with Mr. Cumsz?

5 A Yes, I did.

6 Q How often did you do that?

7 A Well, during the period I was a job leader man, I --

8 Q Let me interrupt you for a moment. Do you remember
9 approximately when that was?

10 A That is from June '73, to May 1974 -- approximately --
11 almost a year -- about.

12 Q Go ahead.

13 A (Continuing) From that period, I used to speak -- to
14 speak to Mr. Cumsz almost daily. He used to call for me,
15 and I would meet him in the lobby, or in Mr. McManus' office.
16 On several occasions, I raised with him the problem of hiring
17 black people to the crew. At the time, he wanted no black
18 people in our crew, and I felt there was a conscious policy
19 on behalf of the union to try to do something about that.

20 JUDGE GOERLICH: Did you express that to him?

21 A I indicated to him that I felt it was a conscious
22 policy. Yes, I did.

23 JUDGE GOERLICH: Very well.

24 A On behalf of the company -- I told him the building
25 manager's son was hired -- and other people that were friend

1 of management were being hired when a job was available.

2 On many occasions, men and women would come and submit
3 applications for employment. Their applications would be
4 put into this drawer -- and they would not be called on.

5 When all of a sudden, John Waters who was related to Mr.
6 Elicin of the company was hired, or again Mr. Viggiano who
7 was the building manager, his son was hired.

8 JUDGE GOERLICH: Are these things that you told Mr.
9 Cumsz?

10 A Yes, I did.

11 When I mentioned this, he became infuriated, and pushed
12 me to the side. On one occasion, he explained to me that
13 we couldn't have black people in the lobby because they had
14 big noses and kinky hair and they would scare the tenants.
15 On another occasion, when I mentioned to him the hiring
16 policies and how I felt, he said they were not my concern.
17 That is not why I was made job leader.

18 Q These questions of discrimination in the hiring practices
19 came out on more than one occasion?

20 A On another occasion, in front of Mr. McManus in the
21 office of the building manager, Mr. Viggiano -- again the
22 question was raised with regard to the hiring of a fellow
23 named Carlos Rivera. When Mr. Cumsz in front of Mr. McManus
24 asked me what color was Carlos Rivera, I explained to Mr.
25 Cumsz that he was in the lobby. If he wanted to know his

(Above-referred to exhibit previously marked Charging Party's Exhibit 1 was received in evidence.)

1

2

3

4

Q You testified that the son of a man called Viggiano was hired by the building manager?

6

A He was.

7

Q Is the manager's name Fernando Viggiano?

8

A That's right.

9

Q His son's name is Mike Viggiano?

10

A Yes.

11

Q Did there come a time that he was hired?

12

A There was.

13

Q Not through the Union?

14

A Well, Mr. Cumsz hired him.

15

Q Did Mr. Viggiano hire you?

16

A I spoke to him. I was taken on the job. The union man was James Minafield. This is when I was new and non-union. He was replaced -- Mr. Minafield's job was assigned was given to Mr. Viggiano. At that time, I myself asked Mr. Calabrese who was the shop steward, spoke with Mr. Jack McManus and with regard to Mr. Minafield getting back his job. That was getting back -- that was wrong. It was in violation of the contract. Mr. McManus reacted by telling us that it was none of our business. That if he wanted to assing anybody to our jobs, that was his concren. He reassigned me to another

25

1 job. He reassigned Mr. Veve to my job that afternoon. After
2 work, that is that day, I myself and Mr. Calabrese and Mr.
3 Veve went to the union and submitted grievances and we were
4 reassigned after that to our previous job positions.

5 Q When did that occur?

6 A That occurred -- I would say about May of 1974.

7 Q You mentioned in your early direct testimony, a woman
8 named Teresa DeSalvatore. Is that her name?

9 A Yes.

10 Q You mentioned that you had protested on her behalf about
11 her working conditions. Is that right?

12 A Yes.

13 Q To whom did you make that protest?

14 A We went first -- we went as a delegation to the union.

15 Q When you say we, you mean who?

16 A Mr. Calabrese and I on one occasion -- and on another
17 occasion, Mr. Veve, Mr. Calabrese and myself went to the
18 union with Mrs. DeSalvatore -- on both times, and after that
19 I spoke to Mr. LeClaire who was the supervisor at that time.
20 I raised the issue that her wages had been cut -- and how
21 the cleaning women generally were doing the same work day
22 porters, and night porters, and they were paid less, and he
23 told me that it was out of his hands. That a grievance had
24 been submitted and that he had nothing to do with it at this
25 point.

1 Q But you did discuss the issue with him?

2 A Yes, I did.

3 Q After listening to your responses to Mr. Gillispie's
4 questions, and my questions, it seems to me that you and
5 Mr. Veve were perhaps the two crew members that were most
6 active on behalf of the union.

7 MR. BERG: Objection to that. An answer to that ques-
8 tion would be an opinion, but not only an opinion, but a
9 self-serving one at that.

10 Q You and Mr. Veve were very active, or inactive in the
11 union?

12 A We were exceptionally active.

13 Q Was anybody else in the crew?

14 MR. BERG: I object to that statement. What does counsel
15 mean by the words active or inactive?

16 MR. LEVINE: I am asking him whether he was active or
17 inactive with respect to the crew.

18 Q (By Mr. Berg) Mr. Soto, with respect to the other
19 crew members, do you know if they were active or inactive?

20 A I don't know what active means.

21 JUDGE GOERLICH: I will sustain the objection to that
22 question.

23 Q (By Mr. Levine) Did other members of the day porter
24 crew discuss questions of working conditions and policies of
25 hiring and firing employees with representatives of manage-

46

1 A He was fired and then transferred out of the building.

2 Q Mr. Rivera was fired, and then transferred?

3 A I only know he was laid off.

4 MR. LEVINE: I have no further questions.

5 JUDGE GOERLICH: Mr. Berg, do you have questions of
6 this witness?

7 MR. BERG: Yes, sir.

8 CROSS EXAMINATION

9 Q (By Mr. Berg) Mr. Soto, you gave us a rather lengthy
10 list of your activities. You gave us an abbreviated list
11 of your union activities. You also stated that the final
12 six months of your employ was the time that you were most
13 active in union activities. Could you tell us exactly what
14 the facts are on which you base that conclusion? Most of the
15 testimony you have given us here concerns incidents that
16 you went to the union about or participated in greivances
17 that took place in 1974, or late 1973.

18 A No, there was a whole series of incidents that took
19 place in the last six months.

20 Q Could you tell me then, for my own edification, exactly
21 what incidents you are referring to?

22 A I was taking part in much more activities than the prior
23 year and a half.

24 The week of July 3rd, for example --

25 JUDGE GOERLICH: What year?

1 A Of 1975 -- the year in question. That week it was either
2 that week that there was a strike of the freight car operators
3 who were construction workers, and Mr. Nelson Timmons was
4 ordered to break the strike and run the elevators -- the
5 construction elevators. He asked that I call the union. He
6 was afraid that if the construction workers came in and caught
7 him strike breaking -- he feared for his safety. I called
8 the union. I spoke to Mr. Dunlie. I spoke to a man by the
9 name of Kevin for the union.

10 Q You mean Kevin McCullough.

11 A Kevin told me that if we were to run the elevator that
12 was strike breaking. That we were members of the AFL-CIO
13 and to inform the company of the union's position. I then
14 met with Mr. Dunlie.

15 Mr. LeClaire informed them of the instructions that the
16 union had given me.

17 Q By the way, you mentioned this particular incident and
18 an arbitration.

19 MR. LEVINE: I object, Your Honor.

20 JUDGE GOERLICH: Overruled.

21 A Shall I answer the question?

22 JUDGE GOERLICH: Yes.

23 A I was involved in an arbitration proceeding. There were
24 many grievances.

25 Q You were a member of Local 32 B?

1 MR. GILLISPIE: Objection, Your Honor, Mr. Berg does not
2 allow the witness to finish answering the question.

3 JUDGE GOERLICH: I thought that was a rather long
4 answer. Go to the next question.

5 If you want to bring anything out further, you may do
6 it on redirect. Go ahead.

7 Q (By Mr. Levine) Who was the union representative, by
8 the way?

9 A Mr. Andy Dunlie, and a lawyer by the name of Kevin.

10 Incidentally, they both got back to me on the phone.
11 They called and told me to instruct the crew not to run the
12 elevator. It was -- that it was strike breaking. We were
13 members of the AFL-CIO and that we would be scabbing in a form
14 if we did that. We met with the men. This was during lunch
15 hour, and then we talked to Mr. LeClaire. I informed him of
16 the union's directive.

17 Q What was Mr. LeClaire's answer?

18 A He answered that we were not ordered to run the elevators.

19 Q Was any disciplinary action taken by Mr. Timmons for not
20 running the elevators?

21 A No.

22 Q What happened when you informed the union of the problem?

23 A The union informed us that we were not to work, because
24 it would be strike breaking.

25 Q You then informed the company to this effect, after which

1 the company did nothing further?

2 A They just did not assign him.

3 Q They ceased assigning Mr. Timmons to the position?

4 JUDGE GOERLICH: Is that what was done?

5 Q What was done?

6 A They fired me the following week.

7 Q Do you feel that is the reason they fired you the
8 following week?

9 A That's the particular reason. I feel that's one of the
10 contributing factors.

11 Q Incidentally, wasn't the falsifying of your employment
12 application one of the very serious contributing factors?

13 MR. GILLISPIE: I object to that, Your Honor.

14 JUDGE GOERLICH: You may answer the question.

15 A I beg your pardon.

16 JUDGE GOERLICH: You may answer the question.

17 A I testified to at least a dozen -- maybe even twenty
18 different occasions where myself and other union members
19 engaged in concerted activities for mutual benefits. We
20 aided each other in these protests. I don't recall every
21 activity that I testified to at the arbitration. This one
22 may have been one, and it may not have been one.

23 Q Mr. Soto, you have a long list of incidents that you
24 have testified to here. When I began my cross examination,
25 you said they related to your discharge. They were not even

T#9

50

1 find out.

2 A Well, when Mr. Rivera was fired -- I am trying to think
3 of the exact month and year. It was in the summer -- in the
4 spring of -- I am not really sure if it was '74 or '75. I
5 am not really sure when Mr. Rivera was fired. I went in with
6 Mr. Rivera when he talked to Mr. Roy LeClaire, and I said to
7 Mr. Roy LeClaire, if he was reinstated we would not pursue
8 this grievance, and Mr. LeClaire then called Mr. Cumsz and
9 talked the matter over with him. The following day Mr. Rivera
10 was reinstated and his firing was turned into a suspension.
11 Subsequent to that, Mr. Rivera was ordered -- the company
12 was ordered by the arbitrator to pay Mr. Rivera for the lost
13 time. That was another case where I intervened.

14 Q Mr. Soto, do you recall, just to keep the record accurate,
15 about this, whether he was fully paid for his lost time?

16 A After he was ordered to -- after the company was ordered
17 to pay him, he was paid.

18 Q He was paid what the company was ordered to pay him.
19 But was he paid for all the time he lost?

20 A Yes, he was.

21 Q Anything else?

22 A On -- in June of 1975, Mr. Nelson Timmons raised a problem
23 with me that even though he was doing a foreman's job, he was
24 not receiving the pay of a foreman. He was only receiving
25 \$10 increase, and this was in the contract. In discussing the

51

1 a man by the name of Andy Calabrese.

2 A Yes. That was in June of 1974.

3 Q Do you know if between December of 1973 and June of
4 1974, was there anything else that came up?

5 A There was the problem of Mike Viggiano being employed.
6 He was a non-union man. There was a problem of myself being
7 replaced by another man. My going to the union. There was
8 a problem.

9 Q In the last letter, was there some statement about a
10 disciplinary action that was pending against Andy Calabrese?

11 A I didn't notice it in the letter. If there were any
12 such statement, it would be that there should be no disci-
13 plinary action taken against him.

14 Q Is that in the letter of February 25, 1974? Is that
15 correct?

16 A Yes.

17 MR. LEVINE: That is Charging Party's Exhibit 1.

18 Q (By Mr. Berg) I am referring to Charging Party's
19 Exhibit 1.

20 MR. GILLISPIE: The witness may be shown a copy of this
21 exhibit if he is to be questioned from it. General Counsel
22 would find that to be proper.

23 (Above-referred to exhibit handed to the witness.)

24 Q Is this the letter, Mr. Soto?

25 That's all I want to ask him. I am not going to ask

1 him a lot of questions.

2 A Yes.

3 MR. GILLISPIE: That's Charging Party's Exhibit 1, Mr.
4 Berg?

5 MR. BERG: Yes.

6 Q (By Mr. Berg) This letter of course, was composed before
7 the discharge of Mr. Calabrese?

8 A Several months away -- a couple of months.

9 Q Do you recall that particular incident concerning this
10 charge of Mr. Calabrese?

11 A Yes, I recall it.

12 Q What was it?

13 A Mr. Cumsz came in to the building and asked for Mr.
14 Calabrese. Mr. Calabrese could not be found by Mr. Cumsz.
15 Mr. Calabrese claimed he was in the men's room when Mr.
16 Cumsz came in. After that, he fired him.

17 Q Do you recall whether or not there was any other incident
18 with respect to Mr. Calabrese's absence?

19 A I don't know what you are referring to.

20 Q As a matter of fact, was not the issue of Mr. Calabrese's
21 discharge grieved before the joint industrial grievance
22 committee, before an arbitrator? Was not Mr. Calabrese re-
23 instated without back pay?

24 A He was reinstated without back pay with all -- full
25 seniority.

1 Q Do you know how much pay he lost, by the way?

2 A The actual amount, I don't know.

3 Q Do you have any approximation?

4 A About two month's -- I guess.

5 Q Didn't you testify that during the course of this
6 particular proceeding, you argued the case. As a matter
7 of fact, didn't the attorney for the union argue the case?

8 A I did testify that I argued the case -- I believe I did.

9 Q Mr. Soto, --

10 A No, I was called by the arbitrator, Mr. Marlin, and he
11 questioned me directly. He asked me questions concerning
12 the firing, and during our examination I handed him the letter
13 which the crew had written on behalf of Mr. Calabrese.

14 Q As a matter of fact, were those letters accepted in
15 evidence?

16 A I believe they were -- and you have copies of them.

17 Q Shortly thereafter, which would have been again in 1974,
18 sometime around June, you said the issue of coffee breaks
19 arose, and I believe that you testified notice was placed
20 on the bulletin board concerning coffee breaks. Is that
21 right?

22 A Yes.

23 Q Do you recall whether or not Mr. Cumsz spoke to you about
24 coffee breaks prior to that notice?

25 A Yes, he had.

1 Q Do you recall whether or not he told you that the
2 coffee breaks were not permitted under the union contract.

3 A What he said to me exactly was, Tom the building is
4 looking cleaner. I know that you have good relationship
5 with the men. I explained to him that we had been taking
6 coffee breaks. He knew it. He saw it documented in all the
7 letters that the men submitted. He then told me that if
8 anyone tried to go before the union, and claim that this
9 was an established practice in the building, he would deny
10 that he ever authorized it.

11 Q Did he ever authorize you to give them?

12 A He sure did.

13 Q When?

14 A After we were hired. Within a month -- a few weeks
15 after I was hired. When we were hired, coffee breaks began
16 to take place on the job. The job leader man was officially
17 in charge. The job leader man said the coffee breaks were
18 in effect from the time period that I was hired -- from that
19 time that Mr. Calabrese was fired in June of 1974. All the
20 way to when Mr. Calabrese was fired in June of '74.

21 Q When you grieved it, the union said the company is taking
22 away coffee breaks.

23 Wasn't there certain terms and conditions in the clause
24 concerning that in the contract?

25 A Yes.

53-
1 Carlos Hernandez?

2 A You are bringing up an incident that I didn't testify
3 to here. I testified to that at the hearing. But if you
4 like, I would testify on Carlos Hernandez.

5 Q I believe Mr. Soto, you did. The notes I am reading
6 I took here.

7 A I can go into that. Mr. Carlos Hernandez was a guard.
8 He had been paid straight time over a number of months of
9 overtime that his time should have been paid for time and a
10 half, and he had lost quite a bit of money. He had raised
11 it with management. Management had not paid him. He was
12 in fear that if he submitted a grievance, he would be fired.
13 He raised it with myself and with Mr. Veve and after work
14 he waited for us. We conferred with him. We went to the
15 union with him. We spoke to Mr. Andy Dunlie -- myself and
16 Mr. Hernandez. He filed a grievance. The next day after
17 the grievance was filed, he was fired. Subsequent to that,
18 the company told him that their computer had made an error
19 in his pay for all the money that they owed him for overtime,
20 and for the holidays that they hadn't paid him for, and then
21 he was put to work in another area, another building, another
22 company.

23 Q Did you think it was conceivable that the computer did
24 make an error here?

25 A He raised it with the company before he came to us, and

1 A Well, I did three things. Myself, Mr. Veve, and Mr.
2 Calabrese on the second occasion, along with Miss DeSalvatore,
3 visited the union Local 32 J, Service International Employees
4 Union.

5 JUDGE GOERLICH: Is that your union?

6 A That's a sister local.

7 Q Were you her shop steward?

8 A She didn't have a shop steward in the building. She
9 didn't have one.

10 I spoke to the vice-president by the name of Mr. Brown.
11 I turned over to him a letter which the day porters had
12 composed in support of a grievance that she had submitted
13 that her work hours had been cut, and in addition to that,
14 I spoke to Mr. LeClaire after that concerning Teresa's
15 grievance and the question of pay for women workers generally,
16 and he told me at the time that this was out of his hands.
17 This was being handled -- the grievance procedure -- he had
18 nothing to do with it. It was being handled by Cumsz, in
19 effect.

20 (Off the record discussion.)

21 JUDGE GOERLICH: On the record.

22 Do you have any further questions, Mr. Berg?

23 MR. BERG: Yes, I do.

24 JUDGE GOERLICH: Very well, you may proceed.

25 Q (By Mr. Berg) Mr. Soto, you were terminated on the 26

1 A Do you want me to name them?

2 Q This was before you passed the leaflets out?

3 A Yes.

4 Q All right, please name them.

5 A I consulted with Carlos Rivera, Andy Calabrese, Joe
6 Cabrera, John Elicin, Andrew Correrri, Fausto Gonzalez, I
7 don't know, about twenty -- Freddie Paddillia was another
8 one.

9 I can look at my records. I do have twenty names --
10 fifteen names of all those who were consulted.

11 Q Mr. Soto, if the object of your passing this out was
12 to gain support, I would assume that in the context of the
13 proceeding before the arbitrator, the only kind of support
14 you could possibly gain would be testimony.

15 A At the time it occurred, the company was threatening
16 all the workers not to testify on behalf of myself and Mr.
17 Veve, and not to get involved in my case. Many of them were
18 really under pressure -- and we wanted them to come forward.
19 We wanted them to testify, and we thought as a means of
20 consolidating our support for the arbitration issue, we would
21 pass out the second leaflet. We wanted them to know about
22 the proceedings that were going on. We were calling on them
23 to come forth.

24 Q But Mr. Soto, why did you pass this out to people other
25 than employees?

1 A I passed them out not to employees, but every trade
2 union member in the buidling, and to anyone who was taking
3 it.

4 Q Did you pass it out to any tenants, do you know?

5 A I didn't recognize any tenants. Anybody who was taking
6 it -- it could have been anybody.

7 Q What support or assistance could people who had no
8 involvement possibly render to your arbitration proceeding?

9 A They would know the information in the company. They
10 would hear it just like other people would hear it, because
11 if they picked up that leaflet and they read it, they would
12 see just what I wanted them to see. I wanted to see justice
13 done -- and they came to the hearing.

14 Q But the arbitration is a private proceeding, is it not?

15 A Well, we attempted -- we asked Mr. Marlin to allow the
16 workers to come into the arbitration. At the time, we were
17 under the impression that we were going to be allowed to have
18 people in the arbitration.

19 Q You didn't at any time feel that this particular leaflet
20 might enduce the company to change their position with regard
21 to your discharge? Is that correct?

22 A Did I think they were going to hire us back because
23 we issued leaflets? No, I didn't think they were going to
24 hire us back. I was trying to exert some pressure on some
25 of the issues that were in the leaflet. Not only that, we

1 were trying to consolidate support for our case.

2 MR. BERG: No further questions.

3 MR. GILLISPIE: General Counsel has some questions.

4 I will make it as brief as I can.

5 REDIRECT EXAMINATION

6 Q (By Mr. Gillispie) Mr. Soto, on cross examination
7 you were asked about some of your earlier testimony. Early
8 in the cross examination you were asked about some of your
9 direct testimony. What I mean is your statement which is
10 relatively specific about some of your activities during the
11 last six months of your employment. I want to ask you if
12 you recall when the incident with Teresa DeSalvatore was?
13 When did that occur, roughly?

14 A I believe that was in April of '75.

15 Q The incident with the guard, Mr. Guzman?

16 A That was in the same month, I believe -- the same month.

17 Q There were two incidents with Mr. Guzman and were they
18 both in April?

19 A I think they were about a month apart.

20 Q When was the first one?

21 A The first one was in April. The second one was after
22 May. When vacations began. When you can start taking them.

23 Q The incident concerning the discovery of the expiration
24 of the guard's contract, then the meeting of the guards and
25 the drawing up of the demands, when was that?

1 A That was from April, May, June.

2 Q Of what year?

3 A Of '75.

4 Q Incidentally, when was that? Was that in June of 1975?

5 A June, July, '75.

6 Q You testified that somewhat prior to July of '75, Mr.
7 Rivera was fired. Is that correct?

8 A Yes, he was fired.

9 Q Did you participate in that incident?

10 A Yes, I did. I intervened on his behalf with Mr. LeClaire,
11 our supervisor.

12 Q When was that?

13 A That was in the spring of '75, I believe.

14 Q Do you remember the month? Do you remember whether it
15 was before or after the Teresa DeSalvatore case?

16 A It was after April '75. Yes, I think it was May. If
17 I am not mistaken it might have been another thing in the
18 same period.

19 Q Were you becoming more active in the union? Were you
20 going to the union for new contracts?

21 With regard to your activities, were you getting ready
22 to tell people everything the company did?

23 Did your union activities continue into that period.
24 You have not specifically testified about that?

25 A Yes, there were quite a few instances in that period.

1 Q On your cross examination, you referred to your meeting
2 with Mr. LeClaire about the Timmons incident. Would you
3 tell us about that?

4 A I believe I can refer to that as a contributing factor.
5 What I mean by that -- well, you have an elevator that is
6 being operated by a construction crew, and then you have a
7 strike.

8 Q No, Mr. Soto, you have not understood the question.
9 You used the phrase contributing factor. That was the one
10 symbolic issue.

11 A That was the last issue before I got fired -- alsmot.

12 Q It was one of the many contributing factors, I under-
13 stand that. You are proper in saying that it was a contribut-
14 ing factor. The same way the guard case was a contributing
15 factor.

16 A I think the guard contract was the straw that broke the
17 camel's back.

18 Q It was, wasn't it?

19 A Yes.

20 JUDGE GOERLICH: If that is the issue, that you are
21 asking this witness questions about, that is what I will have
22 to decide.

23 MR. GILLISPIE: Your Honor, I will move on.

24 Q (By Mr. Gillispie) You recommended Mr. Minafield for
25 a job, I believe. Is that correct?

1 A Mr. Calabrese was fired about six times, and reinstated.

2 Q My question, Mr. Soto, is had he been fired prior to
3 that letter that is dated February 25, 1974?

4 A No.

5 Q Had he been fired after this letter?

6 A Yes.

7 Q Do you recall when he had been fired?

8 A He was fired in June, and in that letter I mention
9 that he was under threat of dismissal. But this letter was
10 prior to the actual firing.

11 Q I understand that was after a previous occurrence of
12 some variety.

13 A Yes.

14 Q One last question. Mr. Soto, I am sorry, just one more.

15 You testified that you passed out the leaflets at 420
16 Lexington Avenue. Why did you pass them out at that location?

17 A That was the location where Andy Calabrese who had been
18 fired was transferred.

19 Q Did you know that was the company's main office?

20 A Yes, that's where O.M.C. has its main office.

21 Q You didn't hand out leaflets anywhere else?

22 A No.

23 Q Did you hand out leaflets at the office of Helmsley-
24 Spear?

25 A I did not.

1 Q Were you accompanied by anyone when you handed out these
2 leaflets?

3 A Yes.

4 Q Do you know by whom?

5 A Yes, by Mr. Veve.

6 Q What is Helmsley-Spear's relationship to O.M.C.?

7 A They are the parent corporation, also stockholders.
8 Helmsley-Spear owns O.M.C.

9 Q Fine. When you were told the company's position with
10 respect to the leafletting, do you recall what that position
11 was?

12 I think that is clear, but I would like to make certain
13 it is.

14 JUDGE GOERLICH: Is it in the record?

15 MR. GILLISPIE: I am not certain it is clearly in the
16 record, all my recollection is not sharp enough.

17 JUDGE GOERLICH: It's late. You are burdening the
18 record with so many words.

19 Go ahead, answer the question as best you can.

20 A The company at the arbitration hearing, changed. First
21 they said we were fired because of our applications.

22 Q What did they say with respect to the leafletting?

23 A That we had no right to do it. That it was liableus.
24 It was lies. That it was not protected.

25 Q Did you have any other remedy?

1 3rd of July, 1975, right?

2 A Yes.

3 Q You testified on the 6th of July, you passed the leaflets
4 out around the premises where you were working.

5 A I don't think so.

6 Q Was it the 9th of July?

7 A Sometime the following week.

8 Q Was this leaflet distributed to the employees on the
9 premises?

10 A Yes.

11 Q Was it distributed to the general public?

12 A To them also.

13 Q You say that your purpose in distrubuting this particular
14 leaflet was to gain and engage the support of the workers
15 in the building.

16 A Any trade union members that wanted to assist me.

17 Q Did you also give these to fellow working people in the
18 building and the adjoining area?

19 A So I did pass it out to the general public. It was
20 passed out in front of the building. All of the workers in
21 the crew received it. They all came out there.

22 Q Did anyone else beside the workers in the crew receive
23 it?

24 A Everyone received it.

25 Q Could this possibly have been received by people who were

65

200

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Second Region

In the Matter of:

OWNERS MAINTENANCE CORPORATION

Respondent

-and-

THOMAS SOTO

Charging Party

: Case No.
2-CA-14044

26 Federal Plaza
New York, New York
Wednesday, March 2, 1977

The above-entitled matter came on for further hearing,
pursuant to adjournment, at 10:00 a.m.

BEFORE:

LOWEL GOERLICH,

Administrative Law Judge

APPEARANCES:

PETER GILLISPIE, Esq.

26 Federal Plaza, New York,
New York, appearing for the
General Counsel.

JAMES BERG, Esq.

292 Madison Avenue, New York,
New York, appearing on behalf
of the Respondent.

ALLAN LEVINE, Esq.
and
EVA CAREY, Esq.

c/o New York Civil Liberties
Union, 845 Fifth Avenue, New
York, New York, appearing on
behalf of the Charging Party.

I N D E X

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

WITNESSESDIRECTCROSSREDIRECTRECROSS

Thomas Soto

210

--

--

--

James Veve

214

247

--

--

Thomas Soto (recalled)

254

261

270

271

Allan Strauss

272

280

283

284

Florancio Garay

288

291

--

--

Carlos Rivera

291

294

--

--

John Cuomo

298

340

360

361

Onofrae Padilla

368

374

--

--

Richard J. Isolinni

377

388

394

--

EXHIBITSFOR IDENTIFICATIONIN EVIDENCEGeneral Counsel's:

8

216

227

9

225

227

10

228

228

11

232

233

12

309

311

13

321

323

14

337

340

15

337

340

16

378

388

17

386

--

Respondent's:

A

267

267

(The witness was excused.)

We will take the next witness.

MR. GILLISPIE: General Counsel would like to call
Mr. Veve.

JAMES VEVE

was called as a witness by General Counsel and, having
been first duly sworn, was examined and testified upon
his oath as follows:

JUDGE GOERLICH: State your name and address for the
record.

THE WITNESS: James Veve, 2999 8th Avenue, New York,
New York 10039.

JUDGE GOERLICH: What is your age?

THE WITNESS: Twenty-four.

JUDGE GOERLICH: Go ahead.

DIRECT EXAMINATION

Q (By Mr. Gillispie) Tell us where you work?

A Right now at this moment I don't work.

Q Where did you last work?

Would you please speak up.

A At One Penn Plaza.

Q Who was your last employer?

A Owners Maintenance Corporation.

Q When did you stop working for Owners Maintenance
Corporation?

1 A July 3rd, 1975.

2 Q Why did you stop working there?

3 A I was fired.

4 Q What kind of work had you done prior to your firing?

5 A I was a porter.

6 Q What were your exact job duties?

7 A I was responsible for outside of the building.

8 Q How long had you worked that job site?

9 A From February 1974 to the time of my dismissal.

10 Q Prior to February 1974 had you worked at any other
11 job site for Owners Maintenance Corporation?

12 A Yes. I worked in January 1974 -- I worked at another
13 building of the Owners Maintenance Corporation which was
14 located at 200 Fifth Avenue.

15 Q I would like to call your attention to your firing.
16 How did you first hear that you were to be fired?

17 A I was notified of that by Mr. Leclear.

18 Q When did that occur?

19 A On July 3rd, 1975.

20 Q Where did that happen?

21 A In Mr. Leclear's office.

22 Q Did Mr. Leclear tell you why you were being fired?

23 A He told us that we were being dismissed because of
24 falsification of a record.

25 Q Did he explain what record?

69

1

2

A No, he did not.

3

Q Was anyone else present besides yourself and Mr.

4

Leclear at that time?

5

A Yes, Mr. Soto.

6

Q Since that time Mr. Veve, have you found out why you were fired?

7

8

A Yes.

9

Q Have you found out what record the company was referring to?

10

11

A Yes.

12

Q What record was the company referring to?

13

A The record of my job application form.

14

JUDGE GOERLICH: Prior to your discharge as an employee, at any time did he discuss with you any falsification of your employment application?

16

17

THE WITNESS: No.

18

MR. GILLISPIE: I would like to have this document marked as General Counsel's Exhibit 8 for identification.

19

20

(The above-referred to document was marked as General Counsel's Exhibit 8 for identification.)

21

22

23

Q (By Mr. Gillispie) Mr. Veve, have you ever seen this document which has been marked as General Counsel's Exhibit

24

25

87

70

1 A Yes.

2 Q Do you recognize the document?

3 A Yes. It is an application form for employment for a
4 job at Owners Maintenance Corporation.

5 Q What was that application for?

6 A It was for a job.

7 Q Is there anything on the application which is incor-
8 rect?

9 A Yes.

10 Q What is that?

11 A That is the question with respect to have you ever been
12 arrested?

13 Q How did you answer that question?

14 A I answered -- no.

15 Q What was the correct answer?

16 A The correct answer is, yes.

17 Q How often have you been arrested?

18 A Twice.

19 Q In each instance, what were you arrested for?

20 A I was arrested for disorderly conduct, trespassing.

21 Q Where was that?

22 A That was in New York City.

23 Q Could you briefly tell us the circumstances of that
24 arrest, quite briefly?

25 A That was in respect to a labor struggle at Nathan's

1 Restaurant chain, at which I was arrested for distributing
2 leaflets.

3 JUDGE GOERLICH: Are you saying that you were in the
4 same labor struggle that Mr. Soto was in?

5 THE WITNESS: The same location, different dates. It
6 was a different date. It was definitely the same location
7 but the same labor dispute.

8 JUDGE GOERLICH: The same labor dispute?

9 THE WITNESS: The same labor dispute.

10 JUDGE GOERLICH: Very well.

11 Q (By Mr. Gillispie) Had you consulted with Mr. Soto
12 concerning that labor dispute at that time?

13 A We were friends, and we knew each other, and we were
14 involved.

15 Q When did that occur, Mr. Veve, what year?

16 A 1974.

17 Q Could you tell us how that arrest for disorderly
18 conduct, or was it trespassing, came about?

19 A It was disorderly conduct -- trespassing.

20 Q Can you tell us how that was resolved, Mr. Veve?

21 A It was an adjournment on conditional discharge.

22 Q I mean the second time. What was that for?

23 A That was for parading without a permit, which occurred
24 in 1972, and that was a result of an antiwar demonstration
25 in which I was arrested along with 10,000 other people.

1 Q Where did that occur?

2 A In Washington, D.C.

3 MR. GILLISPIE: Your Honor, if I may just briefly go
4 into this for a moment.

5 Q (By Mr. Gillispie) Who was the Attorney General at
6 that time?

7 MR. BERG: Objection, I don't see the relevancy of
8 that.

9 MR. GILLISPIE: It is relevant to the nature of the
10 arrest. It is a well-known incident. I want to elicit
11 the information through the witness.

12 MR. BERG: That question has nothing to do with what
13 we are before the National Labor Relations Board for. The
14 question is whether or not he lied on his application.

15 MR. GILLISPIE: I will withdraw the application.

16 Q (By Mr. Gillispie) What was the disposition of that
17 arrest, Mr. Veve?

18 A I paid a \$10 fine.

19 Q How did you come to pay the \$10 fine?

20 A It was treated like a traffic fine.

21 Q Can you tell me whether or not you pleaded guilty?
22 Was your case considered by a jury?

23 A I pleaded guilty to a traffic violation.

24 MR. BERG: Your Honor, again I think he is testifying
25 that he pleaded guilty to a traffic violation.

73

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. GILLISPIE: I believe that was the testimony.

JUDGE GOERLICH: I thought that was what he said.

MR. GILLISPIE: That's the testimony, Your Honor.

Q (By Mr. Gillispie) Mr. Veve, I am going to give you General Counsel's Exhibit Number 8. I want you to look at it. Examine the document.

(Above-referred to document handed to the witness.)

Q (Continuing) Can you recall when you filled it out?

A It is dated January 30th, 1974.

Q When did you fill out the document in relation to the date, that it was dated?

A January 30th, 1974.

JUDGE GOERLICH: With respect to that incident in Washington, were there any other employees of Owners Maintenance Corporation that were involved in it beside yourself?

THE WITNESS: Not that I am aware of.

Q (By Mr. Gillispie) Were you an employee of Owners Maintenance Corporation at that time?

A No.

Q Would you tell us whether or not you filled out this employment application before, or after you had begun working for Owners Maintenance Corporation, regardless of which location you had been working at?

A After I started working.

t.14

1 Q You said you were hired before you filled out the
2 application?

3 A Yes, that is so.

4 JUDGE GOERLICH: Were you hired or did somebody ask
5 you questions? Tell me about how you were hired? Do you
6 recall who you talked to, what was said?

7 A I was recommended by Tom Soto to Mr. Chimez for the
8 job, based on whatever was said by Mr. Soto to Mr. Chimez
9 I was recommended to work at 200 Fifth Avenue. When I
10 started working there -- there was no questions asked
11 about me.

12 Q Who did you report to at 200 Fifth Avenue? Do you
13 recall?

14 A I don't recall the supervisor's name or who it was.

15 Q Did you have a uniform at 200 Fifth Avenue?

16 A Yes.

17 Q How did you get the uniform?

18 A Through a supervisor.

19 Q The supervisor assigned your work clothes. Is that
20 right?

21 A Yes.

22 JUDGE GOERLICH: Very well.

23 Q (By Mr. Gillispie) During the term of your employment
24 with Owners Maintenance Corporation, and specifically at
25 One Penn Plaza, did you fill out an application to become a

75
1 member of any union?

2 A Yes. I was a member of Local 32-J, the Service Inter-
3 national Union.

4 Q For how long were you a member of that union? When
5 did you first join?

6 A I joined in -- after six weeks -- after working at
7 One Penn Plaza which would make it the beginning of March
8 1974, until July 3rd, 1975.

9 Q Did I understand you to say that you are no longer a
10 member of the union?

11 A No, that's not true -- I still am.

12 Q How do you pay your dues, Mr. Veve?

13 A I pay them any way I can.

14 Q That's not my question. Mr. Veve, what are the
15 mechanics of your paying your dues? Do you still pay dues?

16 A Yes, I still pay dues.

17 Q How do you go about that?

18 A I go to the union office and pay dues.

19 JUDGE GOERLICH: How is this going to help me to come
20 to a decision in this case?

21 MR. GILLISPIE: I just wanted to make the fact known
22 that he is still a member of the union.

23 JUDGE GOERLICH: If I find that an unfair labor prac-
24 tice was committed, and he is entitled to his job back
25 under the law, he is still a member of the union. Is that

1 why you raised the fact that he is still a member?

2 MR. GILLISPIE: I thought it might become relevant.

3 Q (By Mr. Gillispie) Were you active in Local 32-J
4 during the period of your employment at One Penn Plaza?

5 A Yes.

6 Q What other activities did you generally take part in?

7 A It was that I was helping my fellow workers -- gener-
8 ally in respect to the provisions of the contract where it
9 related to them in helping them get copies of the contract.
10 In helping them get knowledge about medical benefits --
11 they were entitled to them -- and also on a number of occa-
12 sions going and visiting the union with fellow workers to
13 file grievances. That is the notice to the union about
14 any specific problem that may have arose at One Penn Plaza.

15 JUDGE GOERLICH: Did anyone from the company ever tell
16 you how they got the information that your application was
17 falsified?

18 THE WITNESS: It was reported at the arbitration
19 hearing.

20 JUDGE GOERLICH: Did the company tell you how they
21 got this information?

22 THE WITNESS: Yes. At the arbitration hearing.

23 JUDGE GOERLICH: What was said on that subject?

24 THE WITNESS: They obtained it from the Director of
25 Security at One Penn Plaza, who obtained that information

1 from the Police Department.

2 JUDGE GOERLICH: Did they tell you what date that
3 information was obtained?

4 THE WITNESS: I believe they did at the arbitration.
5 They submitted what is known as a yellow sheet which is a
6 police record of arrest. I believe that it was there --
7 but I don't remember the specific date.

8 JUDGE GOERLICH: Did the company indicate why they
9 made that investigation?

10 THE WITNESS: Yes, they did.

11 JUDGE GOERLICH: What did they say?

12 THE WITNESS: Mr. Cuomo testified at the hearing that
13 at one point he received an anonymous phone call, that me
14 and Mr. Soto were responsible for the rash of thefts in
15 the building, and that along with numerous occasions where
16 people referred to us as troublemakers. On that assumption
17 he proceeded to investigate us and obtained this information.

18 MR. GILLISPIE: General Counsel has Mr. Cuomo under
19 subpoena. I intend to introduce him later in the hearing
20 as an adverse witness.

21 JUDGE GOERLICH: Go ahead.

22 Q (By Mr. Gillispie) Let's return to your union activi-
23 ties. Can you tell us during what course in time had you
24 engaged in those kinds of activities?

25 A Well, pretty much from the very beginning of my

1 employment all the way to the end of my employment at One
2 Penn Plaza.

3 Q I direct your attention to the incident concerning
4 Andy Calabrese, one of the incidents to which Mr. Soto
5 testified yesterday. Did you have anything to do with that?

6 A Yes, I did.

7 Q What was your role in that incident?

8 A I wrote a letter in behalf of Andy Calabrese, request-
9 ing to the Arbitrator that I would be willing to testify
10 at the arbitration proceeding, to testify on behalf of
11 Andy and to state my knowledge of the incident and how it
12 occurred.

13 MR. GILLISPIE: I would like this marked as General
14 Counsel Exhibit 9 for identification.

15 (The document above-referred
16 to was marked General Counsel's
Exhibit 9 for identification.)

17 (Above-referred document handed to the witness.)

18 Q (By Mr. Gillispie) Mr. Veve, I have just given you
19 the exhibit that has just been marked as General Counsel
20 Exhibit 9 for identification. Do you recognize it?

21 A Yes, I do.

22 Q What is it?

23 A It is the letter that I wrote addressed to the union
24 delegate on behalf of Andy saying that I would like to
25 help.

1 evidence. I do not think they are relevant to the occur-
2 ence, whether Your Honor finds that the Arbitrator's award
3 is repugnant to the Act.

4 JUDGE GOERLICH: Overruled. I will admit them in
5 evidence.

6 (Above-referred to documents
7 marked General Counsel's
8 Exhibits 8 and 9 in evidence.

8 JUDGE GOERLICH: Go ahead.

9 Q (By Mr. Gillispie) You mentioned that other employees
10 wrote letters, or a letter similar to this one. How do
11 you know that, Mr. Veve?

12 A I myself and Tom Soto we called a meeting in the noon-
13 time lunch hour. At the meeting we collectively discussed
14 what had occurred -- Andy's firing and decided we would
15 all write a letter on his behalf, each of us -- we did do
16 that.

17 Q How did the meeting come to be arranged?

18 A It was called by myself and Tom Soto.

19 Q Do you recall the indident which Mr. Soto referred to
20 concerning coffee breaks?

21 A Yes, I do.

22 Q Did you play any part in that incident?

23 A Yes.

24 Q What did you do with respect to it?

25 A With respect to that incident I also wrote another

1 letter to -- I believe it was the Joint Industrial Rela-
2 tions Board. I referred the exact name.

3 MR. GILLISPIE: I would like to have this marked as
4 General Counsel's Exhibit Number 10 for identification.

5 (The document above-referred
6 to was marked General Counsel's
7 Exhibit 10 for identification.)

8 (Above-referred exhibit handed to the witness.)

9 Q (By Mr. Gillispie) I have given you the exhibit which
10 has just been marked as General Counsel's Exhibit Number
11 10 for identification. Mr. Veve, do you recognize that
12 document?

13 A Yes, I do.

14 Q What is it?

15 A It is a letter that I wrote addressed to the Joint
16 Industrial Grievance Committee in respect to the question
17 of coffee breaks.

18 Q When did you write that letter?

19 A I wrote it on July 21st, 1974.

20 MR. GILLISPIE: Counsel for General Counsel moves the
21 introduction of General Counsel Exhibit Number 10 in
22 evidence.

23 JUDGE GOERLICH: Any objection?

24 MR. BERG: I object on the ground that it does not
25 have any relevancy to the issue of whether the Arbitrator's
award is repugnant to the Act.

1 JUDGE GOERLICH: Overruled, it may be admitted in
2 evidence.

3 (The document above-referred
4 to was admitted into evidence,
General Counsel's Exhibit 10.)

5 Q (By Mr. Gillispie) Were there any other employees at
6 One Penn Plaza who submitted a letter similar to that one
7 in content?

8 A Yes. All of the day porters wrote a letter beside
9 myself there was Andy -- I mean Carlos Rivera, Tom Soto,
10 Tommy McNally, James Minifield, Ray Mohica, everybody
11 wrote a letter who was working at that time.

12 Q How did they all come to write those letters, Mr. Veve?

13 A They wanted to help. The idea was suggested by myself
14 and Tom Soto. We were the ones who called the lunchtime
15 meeting where we decided to write up these letters.

16 Q Mr. Veve, are you familiar with a woman named Teresa
17 De Salvatore?

18 A Yes, I am. She is the matron of the building in the
19 daytime -- matron at One Penn Plaza.

20 Q Do you recall any incidents concerning Ms. De Salvatore?

21 A Yes, she is the daytime matron of the building. She
22 is the only woman who works during the daytime who services
23 all the women's bathrooms in the building at One Penn Plaza.

24 Q What happened concerning Ms. De Salvatore?

25 A Well, she began -- her work load was increased. But

1
2 her working hours were shortened.

3 Q You said her work load was increased. Was she actually
4 given extra work to do?

5 A Yes. One Penn Plaza is a new building and constantly
6 there is construction -- new floors being opened up all
7 the time. When a floor is opened it means new bathrooms
8 that she has to service, and that has happened. I believe
9 she began working there some time in 1972, and between 1972
10 and 1975 there has been a great increase in her work load.

11 Q How many hours does Ms. De Salvatore work? Do you
12 know approximately?

13 A Approximately I believe at the time of the dispute
14 she was working seven hours.

15 Q What happened? Did she work more or less prior to
16 that time?

17 A I believe -- I am not quite sure because I didn't
18 start working there until '73, '74 so I don't know.

19 Q What was the problem that Ms. De Salvatore had?

20 A It was in 1975, she was working seven hours. Then
21 they reduced her hours by one hour a day. She was reduced
22 to six and her lunchtime -- and her lunchtime was reduced
23 in half to a half an hour only.

24 Q What happened as a result of that problem?

25 A As a result of this situation which had been developing

1 for a period of time -- we had many times raised with her --
2 raised with her the question of discussing the increase
3 in her work load. The fact that she used to many times
4 work on her lunch hour just to catch up. We told her that
5 she should raise it to the union. So when she got her
6 hours reduced she finally agreed to go to the union to
7 discuss it with them.

8 Q You used the phrase we discussed it with her. Pre-
9 cisely who discussed that with her?

10 A We told her to go to the union. It was Tom Soto and
11 myself.

12 Q After your urging, did she go?

13 A Yes, it did occur -- after her hours were reduced.

14 Q How many visits did Ms. De Salvatore make to the union
15 concerning the issue?

16 Did you go with her at the time, or did you go with
17 her on one of the occasions?

18 A On one time -- I believe.

19 Q Did you do anything at the union on her behalf?

20 A Yes me. Could you repeat that question.

21 W Did you do anything at the union for her while you
22 were there?

23 A At the union when I went there we submitted to the
24 vice president of her union -- we submitted a letter
25 written by us on her behalf which was signed by myself for

1 the daytime workers. We submitted the letter to the union
2 for their consideration.

3 MR. GILLISPIE: I would like to have this marked as
4 General Counsel's Exhibit 11 for identification.

5 (Document above-referred to
6 was marked as General Counsel's
Exhibit 11 for identification.)

7 (Above-referred to document handed to the witness.)

8 Q (By Mr. Gillispie) Mr. Veve, I have given you a
9 document which has been marked as General Counsel's Exhibit
10 11. I would ask you to look at it to see if you recognize
11 the document?

12 A I do.

13 Q What is it?

14 A It is the letter that we wrote to Teresa's union
15 delegate which was signed by myself and Tom Soto for the
16 daytime porters.

17 Q The document is dated May 1, 1975. Can you tell me
18 when it was written in relation to that, approximately?

19 A Approximately it was written one or two days before.

20 MR. GILLISPIE: Counsel for General Counsel moves for
21 the introduction of General Counsel's Exhibit 11 into

22 evidence.

23 JUDGE GOERLICH: Any objection?

24 MR. BERG: Yes. Your Honor, I object to it on the
25 ground that it is not relevant to the issue of whether or

1 not the Arbitrator's decision is repugnant to the
2 Act. That is number one.

3 Number two, I really don't know anything about this
4 document, unless General Counsel is going to show some
5 proof that Management knew about it.

6 JUDGE GOERLICH: It may go into evidence.

7 (General Counsel's Exhibit 11
8 was received in evidence.)

9 Q (By Mr. Gillispie) Mr. Veve, this document which
10 has been marked in evidence as General Counsel's Exhibit 11
11 is addressed to Robert Caretti, the union delegate. Did
12 you actually hand the document to him, or who was the docu-
13 ment handed to?

14 A We handed it to Mr. Chester Brown. He was the vice
15 president of this union.

16 Q How was this document circulated for the signatures
17 of the other employees? What were the mechanics of that?

18 A Myself and Tom Soto we circulated it among the day
19 porters on one of our lunch hours.

20 Q Where?

21 A In our locker room.

22 Q Where was the locker room located?

23 A At One Penn Plaza.

24 Q Are you familiar with Mr. Guzman?

25 A Yes, I am.

1 Q What did Mr. Guzman do?

2 A He worked as a guard.

3 Q Do you know any other guards?

4 A I know quite a number of guards.

5 Q Do you recollect any incident regarding the guards
6 as a whole?

7 A Yes, I do.

8 Q When did that incident occur?

9 A That incident -- the incident -- the question of the
10 security guards contract -- of the expiration of that con-
11 tract.

12 Q What did you do with respect to the expiration of the
13 guards' contract?

14 A I helped organized a meeting of the guards to draw up
15 demands -- issues for the new contract.

16 Q Do you recall approximately when that meeting was
17 held?

18 A I believe it was in April.

19 Q Of what year, Mr. Veve?

20 A 1975.

21 Q Do you recall where the meeting was held?

22 A Yes, I do.

23 Q Where was the meeting held?

24 A It was held at the office of a friend of Tom Soto.

25 Q Do you remember where the office was?

1 A Yes, I do.

2 Q Where was it? Did you know the address?

3 A Yes. It was on Fifth Avenue. Exact address I don't
4 know. But it was between 20th and 21st Streets.

5 Q Can you tell us who was at that meeting, if you
6 recall?

7 A I can't recall.

8 Q Approximately in terms of groups of people?

9 A There was myself and Tom Soto who were porters, not
10 guards.

11 The guards there was Freddie Padillia, Ulysses
12 Gonzales -- I believe there was a guard named Johnny
13 Ellison.

14 Q Aside from yourself and Tom Soto who were the other
15 guards that were present at that meeting?

16 A There were no non-guard there.

17 Q I am going to give you General Counsel's Exhibit.

18 I am going to ask you if you can identify that document?

19 (Above-referred to document handed to the witness.)

20 A Yes, I can identify this document. It's the letter
21 to the union Local 32B. That is the letter by the guards
22 setting forth a number of demands that should be considered
23 for the new contract.

24 Q Do you recall who actually, physically wrote the
25 letter?

1 A The letter was actually -- you mean wrote it in terms
2 of typing it, or writing it?

3 Q Both if you recall.

4 A I believe it was Tom Soto.

5 Q Did you have anything to do with the actual drafting
6 of the letter?

7 A Yes, I did.

8 Q What was your role in the drafting of that letter?

9 A Well, for myself -- and Tom collaborated writing and
10 articulating the demands of the guards.

11 (Off the record discussion.)

12 JUDGE GOERLICH: On the record.

13 Q (By Mr. Gillispie) Could you tell me what the draft
14 of the letter was based upon?

15 A It was based on our meeting with the guards, in which
16 it was decided that definite demands would be put before
17 the union delegate.

18 Q Do you know an individual named Carlos Rivera?

19 A Yes, I do. He was a -- he was a daytime porter at
20 One Penn Plaza.

21 Q Do you remember if anything happened concerning Mr.
22 Rivera?

23 A Yes. He was -- some time in June of 1975, I believe
24 the end of June 1975, he sprained his ankle at work --
25 having to leave work early one day, and he came back the

1 doctor's note with doctor's proof that he had sprained his
2 ankle, and he could not work, and that was why he had to
3 leave early -- which the company refused to accept, saying
4 that it was unsatisfactory to the company, and he had to
5 get further proof of having this injury. He was not allowed
6 to go out and get another doctor's note which he had. The
7 company refused to accept that. This occurred on the first
8 couple of days of the week. Finally Carlos came back on
9 Thursday which was a payday -- which is when we get paid
10 on Thursday -- to get his paycheck.

11 Q Which paycheck was this, Mr. Veve?

12 A The paycheck is the payment of the previous week of
13 work.

14 Q To your knowledge, had Mr. Rivera been working the
15 previous week?

16 A Yes --

17 MR. BERG: Your Honor, I feel that I have to object
18 to all of this testimony. It is only burdening the record.
19 It has no relevancy to this issue. We are wasting a lot
20 of time on an individual grievance.

21 JUDGE GOERLICH: I am in agreement with you. The
22 material matter has to do with the activities of this
23 individual in connection with a greivance. I don't think
24 it is necessary to go into all the details.

25 MR. GILLISPIE: I want the basic incident to be

1 clear, but I will now move forward.

2 Q (By Mr. Gillispie) In the event that Mr. Rivera had
3 a problem to whom did Rivera speak about his problem?

4 A He spoke to me about a problem, and what to do about
5 his problem. I spoke to Mr. Leclear.

6 Q Who is Mr. Leclear?

7 A Mr. Leclear is the supervisor, or was a supervisor
8 of the daytime porters at that time.

9 Q Where did you speak to Mr. Leclear?

10 A I spoke to him in the lobby at One Penn Plaza.

11 Q Do you recall what you said to Mr. Leclear?

12 A I told him that his treatment of Carlos for the pre-
13 vious week was to my knowledge -- was petty harassment,
14 and an unfair labor practice. That he should give Carlos
15 his paycheck, since it was he who sent Carlos back home
16 the previous two days of work.

17 Q What was the result of this?

18 A We saw that the result was that Carlos did get his
19 paycheck.

20 Q Did Mr. Leclear give him the paycheck immediately?

21 A No.

22 Q What did he do?

23 A Immediately he said he had to consult with the man in
24 the office. He had to consult with Mr. Chimez about giving
25 that person anything.

1 Q When you had raised this with Mr. Leclear where was
2 Mr. Soto at this point in time?

3 A Mr. Soto was on vacation.

4 Q Did you explain to Mr. Leclear why it was you that
5 had come to him?

6 A Yes, because Mr. Leclear stated that, what business
7 was it of mine. I should mind my own business with respect
8 to this. I notified him that, first of all it was a fellow
9 union man that was being grieved. But I had been asked by
10 Tom Soto, the shop steward, to take his case if there were
11 any problems that would occur while he was away.

12 Q Mr. Veve, you have testified that this incident
13 occurred some time in June. Approximately how long after
14 this incident were you fired? Can you remember the amount
15 of time?

16 A Yes, I believe it was approximately -- about two
17 weeks after that, that I was fired.

18 Q Let me take you back to the time when you mentioned
19 the name of Guzman which was awhile back. You say now
20 Mr. Guzman had a problem with his employment?

21 A Yes, he did.

22 Q Did he in early May of 1975 --

23 A No, in early April of 1975, he was laid off which he
24 felt was unjustified since he had more seniority than
25 others.

1 Q Can you just tell me what, if anything, was involved
2 concerning the Guzman incident?

3 A My involvement was that I went with him to the union,
4 and helped him submit a grievance.

5 Q Did anyone go together with you and Guzman?

6 A Yes, Mr. Soto.

7 Q Aside from that there were two occasions that you
8 went to the union.

9 A The second occasion was not only myself and Mr. Soto,
10 Mr. Guzman, but seven other fellow employees.

11 Q How was that group of employees who went to the union
12 on the second occasion arranged for? How did that come
13 about?

14 A That was arranged by myself and Mr. Soto. We spoke
15 with a number of the workers and agreed to get together
16 there after work.

17 Q Where did you speak to them?

18 A In our lunchtime -- in the lobby -- wherever we had
19 an opportunity whenever we had an opportunity to talk to
20 them, we did.

21 Q During lunchtime, in the lobby, but physically at
22 what building?

23 A One Penn Plaza.

24 Q Just to be complete, Mr. Veve, I want to direct your
25 attention to General Counsel's Exhibit 11 which is a letter

1 of May 1, 1975. There are names on page 3 of the letter.
2 The name which is the second name from the bottom is Nelson
3 Timmons. Is that the Mr. Timmons that has been referred
4 to earlier?

5 A Yes, I believe so.

6 Q He is the company foreman?

7 A Yes, he is the company foreman.

8 Q Mr. Veve, aside from the incidents to which you have
9 referred, are there any other incidents?

10 A Yes, there were other incidents. Do you want me to --

11 Q Just generally what other kinds of things occurred?

12 A Well generally there were occasions where we had
13 occasion to visit the union, or to help a fellow employee
14 who made a grievance in the course of our work there.

15 Q Approximately if you can estimate, how often did
16 those types of things occur?

17 A Sometimes every couple of weeks, sometimes once a
18 month, quite frequently, especially near the end of my
19 employment.

20 Q Tell me, Mr. Veve, from time to time you have referred
21 to Mr. Soto in various discussions with him. Can you
22 briefly discuss, quite briefly, the kind of relationship
23 you had with Mr. Soto at work?

24 A Well, Mr. Soto was a shop steward that recognized the
25 reality of the union at work -- and myself whenever something

1 that I knew would occur, or if I had a question, I would
2 discuss it with Mr. Soto, and we had a relationship where
3 we collaborated on many occasions, and as I stated on a
4 number of occasions we went to the union together or even
5 though I am not a shop steward we had a relationship where
6 he would discuss and I would recommend in respect to any
7 situation that would develop, and he would do likewise.

8 JUDGE GOERLICH: Have you finished this line of ques-
9 tioning?

10 MR. GILLISPIE: I was just going to ask three questions
11 about the leaflet, and then I will be done with the wit-
12 ness.

13 JUDGE GOERLICH: Go ahead.

14 Q (By Mr. Gillispie) For a period of time after your
15 discharge did you distribute anything? More specifically,
16 did you partake in the distribution of General Counsel's
17 Exhibit Numbers 6 and 7 known as leaflets?

18 A Yes, I did distribute the leaflets shortly after
19 firing.

20 Q Where did you distribute them?

21 A At One Penn Plaza.

22 Q Did you distribute them elsewhere?

23 A I had occasion subsequently to distribute at another
24 building.

25 Q What was that building?

A The Helmsley-Spear main office which is located at

1 42nd Street, 60 East 42nd Street, something like that.

2 Q What did Helmsley-Spear have to do with Owners Main-
3 tenance Corporation?

4 A It is the parent, or OMC is a subsidiary.

5 MR. BERG: Objection, I don't think the witness is
6 competent to answer the question.

7 MR. GILLISPIE: I will withdraw the question.

8 Q (By Mr. Gillispie) Did you distribute those leaflets
9 anywhere else?

10 A No, I did not.

11 Q At One Penn Plaza when you distributed the leaflets
12 physically where were you in relation to the building?

13 A I was on the sidewalk in front of the main entrance
14 of One Penn Plaza.

15 Q The sidewalk is on which street?

16 A 34th Street.

17 Q When you distributed the leaflets at Helmsley-Spear
18 which I think you testified was 60 East 42nd Street, where
19 did you distribute the leaflets, in relation to the build-
20 ing?

21 A In front of the main entrance thereto -- in front of
22 the sidewalk.

23 Q What was the period of time when you first distributed
24 the leaflets?

25 A It was distributed around July. We got fired July 3rd.

1 around July 6th, or 7th. I was fired Thursday, and it was
2 the following Tuesday.

3 Q A few days afterward?

4 A A few days afterward.

5 Q I show you this pamphlet which has been marked as
6 General Counsel's Exhibit 7. It is a multi-page leaflet
7 which was distributed when?

8 A In October.

9 Q Were both of the leaflets distributed by you at each
10 of the two buildings that you mentioned?

11 A No.

12 Q Which leaflet was distributed at both locations?

13 A The second one.

14 Q The first leaflet do I understand you correctly that
15 was only distributed at One Penn Plaza?

16 A Only at One Penn Plaza.

17 MR. GILLISPIE: I have no further questions of this
18 witness at this time, Your Honor.

19 JUDGE GOERLICH: I would like to ask you some ques-
20 tions about the leaflet that has been marked as General
21 Counsel's Exhibit Number 7.

22 I want you to look at General Counsel's Exhibit 7.
23 You will note that it says, "Black brother faces racism at
24 OMC. The black brother's name is James Brown." This did
25 not say black African. Did you participate in that matter

97

1 at all?

2 THE WITNESS: In respect to his case -- to his case?

3 JUDGE GOERLICH: Read it.

4 THE WITNESS: No, not in his specific grievance.

5 JUDGE GOERLICH: Now let's go on to John Ellison. Did
6 you participate in his grievance or in any manner by rep-
7 resentation of or contact with the company in any way?

8 THE WITNESS: I just went to the union with him.

9 JUDGE GOERLICH: Tell me about it.

10 THE WITNESS: When he was laid off --

11 JUDGE GOERLICH: I want just your participation.

12 THE WITNESS: I went with him to the union, and he
13 spoke to the union. I went with him, and he did the talk-
14 ing. I just went with him.

15 JUDGE GOERLICH: Very well.

16 THE WITNESS: What I wanted to answer about James
17 Brown -- what I started to say about James Brown -- I just
18 wanted to mention one thing I did with him, myself, Mr.
19 Veve, we went with him to the Human Rights Commission. We
20 visited with him and spoke with the Human Rights Commission
21 about his case.

22 JUDGE GOERLICH: That's James Brown?

23 THE WITNESS: James Brown.

24 JUDGE GOERLICH: Very well. Tell me about your union
25 brother, Fausto Gonzalez. Did you participate in his

1 grievance?

2 THE WITNESS: Yes -- yes, I went to the union with
3 him myself and Mr. Veve went to the union with him.

4 JUDGE GOERLICH: I take it you are familiar with his
5 grievance? The one that is related to the exhibit.

6 THE WITNESS: I don't remember this exactly anymore.
7 Wait a minute -- yes I am familiar with the case. I may
8 not know the exact details but I remember what the issue
9 was.

10 JUDGE GOERLICH: Are you familiar with Mr. Brown's
11 case too?

12 THE WITNESS: Yes, I am familiar with his case.

13 JUDGE GOERLICH: I am looking at page 3. There is a
14 statement in this exhibit which says John Cuomo, gun carry-
15 ing ex-cop, has threatened workers not to testify or
16 support or associate with Jaime and Tommy.

17 Do you know personally whether he carries a gun? Do
18 you know that he threatened workers?

19 THE WITNESS: I know this. He has threatened people.

20 MR. GILLISPIE: Counsel for General Counsel will
21 introduce first-hand testimony about this during the course
22 of the hearing.

23 JUDGE GOERLICH: What I want to know from this witness
24 now is did he personally know? He was distributing the
25 leaflets.

1 THE WITNESS: Yes, I am aware that he threatened people.

2 JUDGE GOERLICH: Very well. Over on another page it
3 indicates the following: Dedicated worker wins partial
4 victory. Do you see that? Read it.

5 THE WITNESS: Yes, I do.

6 JUDGE GOERLICH: That refers to brother Carlos Rivera.
7 Are you familiar with that grievance?

8 THE WITNESS: Yes.

9 JUDGE GOERLICH: Did you have anything to do in con-
10 nection with this?

11 THE WITNESS: Not directly.

12 JUDGE GOERLICH: Very well, are there any further
13 questions, Mr. Gillispie, in view of the questions that I
14 just asked? Do you have any further questions of this
15 witness?

16 MR. GILLISPIE: No, Your Honor.

17 JUDGE GOERLICH: We will now go to Mr. Levine or Ms.
18 Carey, whoever is going to do the interrogating.

19 Mr. Berg, you are due for cross examination.

20 (Off the record.)

21 (Recess.)

22 JUDGE GOERLICH: On the record.

23 You may proceed, Mr. Berg.

24 CROSS EXAMINATION

25 Q (By Mr. Berg) Mr. Veve, I would like to show you a

1 Counsel's Exhibits 9, 10 and 11. Do you recognize those
2 as being letters that you wrote?

3 A Two of them I wrote personally. I collaborated on
4 the other.

5 Q Do you also recall whether or not these letters were
6 presented before Arbitrator George Morris regarding your
7 discharge on July 3rd, 1975?

8 A The letter on behalf of Andy Calabrese was submitted
9 to the Arbitrator.

10 Q Was it?

11 A It was.

12 Q Do you recall what number exhibit it was?

13 A I don't assume -- you do.

14 MR. GILLISPIE: I believe it was General Counsel's
15 Exhibit 9.

16 Q (By Mr. Berg) Mr. Veve, the letter you wrote on the
17 question of coffee breaks was submitted to the Arbitrator.

18 A The letter was submitted to the union.

19 Q I am questioning you as an attorney. Was each one of
20 these presented as exhibits in the arbitration hearing
21 concerning your discharge?

22 MR. LEVINE: I think we can stipulate that each one
23 of them was. It is stipulated that each one was presented
24 to the Arbitrator.

25 MR. GILLISPIE: Counsel for General Counsel will

1 stipulate to that also.

2 JUDGE GOERLICH: Is that acceptable, Mr. Berg?

3 MR. BERG: Yes.

4 JUDGE GOERLICH: Very well. That may be made a part
5 of the record.

6 Q (By Mr. Berg) Mr. Veve, you went into some detail
7 concerning the matter of Ms. De Salvatore whose working
8 hours were reduced to six from seven.

9 Mr. Veve, do you know whether or not under the union
10 contract that was applicable at the time between Owners
11 Maintenance Corporation and Local 32-J, whether or not the
12 company had a right to reduce hours from seven to six?

13 MR. LEVINE: Your Honor, I object, this is irrelevant.
14 It was discussed in previous questions concerning the sub-
15 ject of grievances. It is not part of the action that Mr.
16 Veve acted on Ms. De Salvatore's behalf.

17 JUDGE GOERLICH: I agree with you, but Mr. Gillispie
18 opened up the subject. Go ahead.

19 Q (By Mr. Berg) You may now answer the question, Mr.
20 Veve.

21 A To the best of my knowledge, the union contract of
22 32-J states in so many words that the workload cannot be
23 reduced so that there is a resulting pay cut. That was
24 my understanding of it.

25 Q Do you know whether that contract contained an hours

1 MR. LEVINE: I have some questions that I want to ask
2 him.

3 JUDGE GOERLICH: If it is by way of testimony, proceed.
4 Mr. Soto, you are recalled.

5 Are you the same Mr. Soto who testified before in this
6 proceeding?

7 MR. SOTO: I am.

8 JUDGE GOERLICH: I want you to understand you are
9 still under oath.

10 THOMAS SOTO

11 was recalled as a witness and, having been first duly
12 sworn, was examined and testified further as follows:

13 FURTHER DIRECT EXAMINATION

14 Q (By Mr. Gillispie) Mr. Soto, I would like to give
15 you General Counsel's Exhibit Number 7. I would like you
16 to turn to page 2 of the pamphlet in the upper left-hand
17 portion of the pamphlet reads the following: Black brother
18 fights racism at O.M.C. Is black brother James Brown the
19 James Brown you are familiar with? Are you familiar with
20 this problem?

21 A Yes, I am.

22 Q What is this problem?

23 A His problem was that he put in for a position that
24 was open while he was employed by Owners Maintenance
25 Corporation. He was denied this position. Mr. Brown is

1 black. A white employee as brought in for the job who
2 has less seniority. He grieved it. That was the first
3 shot at it. Again a position became open. He submitted
4 his request for that position again Mr. Brown was denied
5 this position. Another white employee with less seniority
6 was brought in. Ultimately Mr. Brown went to the Human
7 Rights Commission along with myself and Mr. Veve who brought
8 the suit to a hearing and participated in the proceeding
9 on Mr. Brown's behalf. That case is still pending today.

10 Q In addition to going to the Human Rights Commission,
11 how did you participate if at all, in assisting James Brown?

12 A Both myself and Mr. Veve have met with Mr. Brown's
13 attorneys -- two attorneys. We have participated in the
14 proceedings regarding this case and have gone to the union
15 and conferred with the delegate on this case -- Mr. Andy
16 Dunley.

17 Q There is a second article which reads: Workers reverse
18 discriminatory layoff.

19 A That refers to Johnny Eliason.

20 Q Do you have any knowledge of this incident with Mr.
21 Eliason?

22 A He was laid off out of seniority. He is a black
23 employee. Mr. Veve and myself went with Mr. Eliason to the
24 union. It was grieved. H's layoff was reversed, and he was
25 reinstated.

1 Q Tell me about the incident below the Eliason article
2 and below the title contained in that article related below
3 the two pictures. One is a picture of Fausto Gonzalez.
4 Do you remember the details of Mr. Gonzalez' problem?

5 A Mr. Gonzalez is a guard and a member of Local 32-B.
6 He is one of the people who has the most seniority amongst
7 the security guards. His request to work the day crew had
8 been denied -- his coming in to the day crew, and myself
9 and Mr. Veve went with him to the union, and we grieved it.
10 He is now part of the day crew.

11 Q I would like to read what is reflected in this exhibit.

12 (Witness hands exhibit to Mr. Gillispie.)

13 Q (Continuing) On page 3 of the exhibit that you have
14 described there is a letter in the upper portion and then
15 a picture of a man and a caption that refers to John Cuomo,
16 gun carrying ex-cop, has threatened workers not to testify
17 or support of associate with Jaime and Tommy.

18 Do you have knowledge of such threats?

19 A I do not have personal knowledge of such threats. But,
20 I know of such threats that have happened. There are
21 dozens of witnesses. The Arbitrator, George Morin, com-
22 mented that there were threats. They were threatened that
23 if they testified at the arbitration -- he said, those two
24 were troublemakers. He told the men if they sided with us
25 they were siding against the company.

1 Q You say this happened a dozen or so times. Do you
2 have any specific witnesses?

3 A Allan Strauss, Florancio Garay, Freddie Padilla,
4 James Minifield, Joe Cabrera.

5 MR. BERG: Your Honor, I am going to object to this
6 witness' whole line of testimony. The Arbitrator heard
7 all of this testimony and made a finding. I would assume
8 that Your Honor could be bound by the finding of the
9 Arbitrator.

10 JUDGE GOERLICH: That's what this case is all about.
11 Whether I am in fact bound by the findings of the Arbitrator
12 I shall decide, Mr. Berg. If I so find I will dismiss this
13 case. But what General Counsel is insisting upon is that I
14 ignore the findings of the Arbitrator.

15 MR. BERG: I object then on the ground that Mr. Soto
16 is testifying as to what other people said. This is hear-
17 say testimony.

18 If your decision is substituted for the decision of
19 the Arbitrator, that is hearsay evidence. This was pre-
20 sented before the Arbitrator who heard all of the evidence.

21 JUDGE GOERLICH: I may well do that. Will you offer
22 the entire transcript that was taken before the Arbitrator?

23 MR. BERG: There was no stenographic transcript kept
24 of the proceeding.

25 MR. GILLISPIE: Your Honor, there was the underlying

1 did it get there?

2 A I do.

3 Q Whose idea was it?

4 A It's my idea and Mr. Veve's idea. We thought it would
5 be good to notify our fellow union members of the next
6 holiday that was coming up. Who our delegate was. What
7 his phone number was. What the address of the union was --
8 and when to call -- and all of that information contained
9 in that box.

10 MR. GILLISPIE: I would like to point out for the
11 record that the witness does not have a copy of the exhibit
12 in front of him.

13 JUDGE GOERLICH: What am I supposed to do with that
14 bit of information?

15 MR. GILLISPIE: I think that may well be relevant to
16 who wrote it. His recollection is so sharp and clear.

17 JUDGE GOERLICH: Go ahead.

18 Q (By Mr. Gillispie) Is the article that states: Dedi-
19 cated workers win partial victory, in fact based on an
20 occurrence you are familiar with?

21 A I certainly am.

22 Q Would you describe that briefly for us?

23 A I and Mr. Veve, along with Mr. Calabrese were trying
24 for two weeks -- after that Mr. Veve and myself were sub-
25 sequently told that Mr. Rivera submitted a grievance at a

1 meeting at which he went to along with incidentally along
2 with Mr. Dunley. He was offered reinstatement if he would
3 stay away from us, if he didn't testify at the proceeding
4 against the company. He was reinstated at another building.
5 Subsequently we discussed it with him, and he was reinstated
6 at another building he got his job back. We felt it was a
7 partial victory since he was reinstated. He was fired two
8 weeks after us -- and then the grievance began that took
9 place about which I was consulted, along with Mr. Dunley,
10 and the three of us met with I think -- with Chimez. He
11 offered to Mr. Rivera that if he didn't testify he could get
12 his job back. Mr. Rivera was reinstated at another building
13 and later was laid off.

14 JUDGE GOERLICH: Mr. Soto, after you were discharged
15 did you continue as shop steward or did you lose that status?

16 THE WITNESS: I beg your pardon.

17 JUDGE GOERLICH: After you were discharged did you
18 continue as shop steward? Did you lose your status?

19 THE WITNESS: I continued as steward.

20 MR. GILLISPIE: I have no further questions of this
21 witness at this time.

22 JUDGE GOERLICH: Mr. Lavine, do you have any questions
23 of this witness?

24 MR. LEVINE: Just a couple, Your Honor.

25 JUDGE GOERLICH: Very well.

1 Q Then you are not familiar with any written rules of
2 Local 32-B with regard to that regulation?

3 A I never saw any written rule on that. I have attempted
4 to look this up.

5 Q Then of course you are familiar with that rule?

6 A I did not see any rule.

7 Q You ceased to be the shop steward there?

8 A I ceased to be the shop steward when Mr. Marlin upheld
9 the discharge of the company.

10 Q Mr. Soto, on page 3 of the pamphlet which I am handing
11 to you, there is a letter to the Arbitrator. Did you write
12 that letter?

13 A It was written in consultation with other employees.
14 I discussed it with others. How we might make the Arbitrat-
15 or aware of our activities. Many of the employees were
16 scared to testify because they had been threatened. They
17 were never scared to write letters. The letters were never
18 admitted in evidence. They were scared to testify but they
19 were not fearful of writing a letter.

20 Q But what was the alleged purpose of that?

21 A There were twenty employees of O.M.C.

22 Q Did you have a copy of that letter, Mr. Soto?

23 A I did. It was submitted to the Arbitrator as evidence.

24 Q Can I have a copy?

25 MR. GILLISPIE: I would like the record to reflect

1 MR. LEVINE: We did enter it as an exhibit. It was
2 an exhibit.

3 THE WITNESS: Yes. It is listed on that sheet -- I
4 believe.

5 JUDGE GOERLICH: Very well. If it was admitted by
6 the Arbitrator the question as to why it was not admitted
7 has no materiality.

8 THE WITNESS: May I explain? It was introduced twice.

9 JUDGE GOERLICH: No, if there is any explanation your
10 attorney will bring it out.

11 MR. LEVINE: Your Honor, with regard to that issue
12 Mr. Berg has said it wasn't included in his list. Since
13 it was not, he will not stipulate that it was.

14 MR. BERG: Yes, I will.

15 MR. LEVINE: It was on my list as a petition.
16 Naturally when it was referred to as a letter that caused
17 the confusion. It was Union Exhibit Number 12 at the
18 arbitration.

19 MR. BERG: I will stipulate to that.

20 JUDGE GOERLICH: Very well, let's proceed to the next
21 point.

22 Q (By Mr. Berg) Mr. Soto, the people that signed this
23 particular petition, did they appear and testify before
24 the Arbitrator?

25 A No -- a good number did -- maybe about half.

MR. BERG: Thank you. I have no further questions.

1 THE WITNESS: Twenty-two.

2 JUDGE GOERLICH: You may proceed.

3 DIRECT EXAMINATION

4 Q (By Mr. Gillispie) Mr. Strauss, where are you working
5 currently?

6 A At One Penn Plaza.

7 Q What do you do there?

8 A I am employed as a guard.

9 Q What is the name of your company?

10 A Owners Maintenance Security Corporation.

11 Q When did you first start working at One Penn Plaza?

12 A January of 1974.

13 Q At that time what was the name of the company?

14 A Owners Maintenance Corporation.

15 Q Have you sought to change companies or in fact has
16 there simply been a change in the name of the firm?

17 A I know nothing about the business matters -- or
18 whatever.

19 Q In the past prior to July 31st, 1975 which is the date
20 that Mr. Soto and Mr. Veve were fired, were you friendly
21 with Mr. Soto and Mr. Veve?

22 A Yes, I was.

23 Q How did you come to know them?

24 A They helped with the union organizing of the guards'
25 contract. They went with Mr. Andy Correrri and Mr. Benjamin

Rivera and found our contract was overdue. They had called us together for a meeting where we discussed the contract.

Q Were you personally present at that meeting?

A Yes, I was.

Q Do you remember approximately when it was?

A When it was -- it would have to be some time in April, because the contract comes up in March of '75 -- approximately.

Q Do you recall what was discussed at that meeting precisely?

A It was what the guards would like to see in their contract, and basically a new contract.

JUDGE GOERLICH: You do not need to go into all the details.

MR. GILLISPIE: I think that such questions that would be asked would further the questioning about that meeting.

JUDGE GOERLICH: Did it produce anything tangible that you recall?

THE WITNESS: Very shortly after that we did have a contract which most of -- what was -- what was agreed on -- this was put into that contract.

Q (By Mr. Gillispie) Mr. Strauss, I would like to show you an exhibit.

JUDGE GOERLICH: Does his name appear on the exhibit?

MR. GILLISPIE: I believe it does.

1 Q (By Mr. Gillispie) After the firings of Mr. Soto
2 and Mr. Veve, Mr. Strauss, did anyone approach you to talk
3 to you about them?

4 A Yes. There was a petition issued on behalf of Tom
5 Soto and Jaime Rivera, and my signature was on it.

6 Mr. Constrastano, after he found out my name was on
7 it -- and he started asking me questions like, do you know
8 that Mr. Soto is a known drug dealer. Would you like to
9 have him associate with your children if you had any.

10 Q In other words, he was trying to put --

11 MR. BERG: Objection.

12 JUDGE GOERLICH: I don't know what he was trying to
13 say. What is the end of your question?

14 Q (By Mr. Gillispie) What did you say to him, and what
15 did he say to you?

16 MR. BERG: That is of no use in this proceeding.

17 A After Tommy and Jaime were fired I contacted them
18 through Mr. James Minifield, and in one instance in the
19 lobby when I was talking to Mr. Minifield as he was coming
20 in for his day's work --

21 JUDGE GOERLICH: Is he a supervisor?

22 THE WITNESS: No.

23 JUDGE GOERLICH: Did Mr. Constrastano speak to you
24 after he saw you speaking to this man?

25 THE WITNESS: After he saw me speaking to Mr. Minifield,

1 he came out and he said, after I finished speaking to Mr.
2 Minifield that Mr. Cuomo is watching you, and you better
3 stay away from that big black monkey. He is nothing but
4 a commie liberal. After that I was just moved to the upper
5 floors, which means your seniority was changed -- which
6 means you'd better watch out, you are the next man to go.

7 JUDGE GOERLICH: Go ahead.

8 Q (By Mr. Gillispie) I want you to look at this docu-
9 ment marked as Respondent's Exhibit A. Can you identify
10 it? Is that your signature (indicating) on this document?

11 A It is (indicating) there.

12 MR. GILLISPIE: Thank you, Mr. Strauss. I have no
13 further questions of this witness at this time.

14 JUDGE GOERLICH: Mr. Levine, do you have any questions
15 of this witness?

16 MR. LEVINE: I have none at this time, Your Honor.

17 JUDGE GOERLICH: Mr. Berg, you may proceed.

18 CROSS EXAMINATION

19 Q (By Mr. Berg) Mr. Strauss, you testified at the
20 arbitration hearing before George Marlin for Mr. Soto and
21 Mr. Veve?

22 A Yes, I did.

23 Q Are you still employed by the company, Mr. Strauss?

24 A Yes, I am.

25 Q Have you been harassed to your knowledge in any way

1 since that arbitration proceeding?

2 A Yes, I have.

3 Q How?

4 A In one instance they took me off the job I was on and
5 put me on another job in another area, just so I wouldn't
6 be involved in the lobby to see what was going on at any
7 time -- speaking to people.

8 Q Did they tell you that the transfer from the lobby was
9 so that you could not see what was going on?

10 A I was told -- by the way the Corporal was. I wasn't
11 told by anybody in supervisory personnel that it was be-
12 cause of the union -- because I think they had no right
13 to change me.

14 Q When were you changed?

15 A I was changed back to the position.

16 Q Are you still in that position?

17 A Yes, I am.

18 Q Any other harassment?

19 A Not to this day -- no.

20 Q You say you were told by the Corporal that this was
21 the reason.

22 A That's the case.

23 Q Is the Corporal a layman?

24 A Yes.

25 Q Did he say anything else to you?

1 Q (By Mr. Gillispie) Mr. Strauss, you were in the
2 building for some period of time while Soto and Veve were
3 there. Can you tell us from your personal knowledge the
4 effect of their activities?

5 MR. BERG: Objection, I think that calls for an
6 opinion on the part of the witness. What the effect of
7 their activities are. Did he physically witness the things
they did?

JUDGE GOERLICH: Sustained.

10 Q (By Mr. Gillispie) Let me ask you this question.
11 When you first arrived at the building were you familiar
12 with the union?

13 A No, I was not.

14 Q Did you know how to file a grievance?

15 A No, I did not.

16 Q Did you know who to call or what to do if you felt
17 that the contract was being violated in its application?

18 A I didn't even know about the contract.

19 Q Do you know what to do now?

20 A Yes, I do.

21 Q How did that come about?

22 A I was helped by Tom Soto, and Jaime Veve

23 Q What kind of help did they give you?

24 A I think they told me that there was a union contract.
25 They helped us put the demands together. I had no know-

1 ledge of the union until they talked to me about the union.

2 Q What did they show you?

3 A They tried to help us unite ourselves. Sometimes we
4 went to the union in a group. Sometimes I went alone.

5 MR. GILLISPIE: I have no further questions.

6 MR. BERG: I have some questions.

7 RECROSS EXAMINATION

8 Q (By Mr. Berg) Mr. Strauss, you just testified that
9 you went to the union on your own. How many times did you
10 go the union?

11 A I can't give you a specific number offhand.

12 Q Sometimes you went in groups. Can you tell us what
13 groups you went with?

14 A Yes, it was a case with Mr. Guzman. It dealt with
15 his seniority rights. Approximately nine of us went to
16 the union in his behalf.

17 Q That was one group?

18 A Yes, it was.

19 Q Did you go to the union in a group after the firing
20 of Tom and Jaime?

21 A We went in groups to the union on behalf of the
22 seniority rights. Again this action was on behalf of Tom
23 Soto, we were trying to help him.

24 Q How many times did you go there in a group?

25 A It was about twice to the best of my estimation.

1 Q Who went with you? Who was in the group?

2 A I can't recall that. I can't recall the names.

3 Q How many times did you go on your own?

4 A As many times as I wanted.

5 Q How many times did you go with just Mr. Soto?

6 A About two or three times.

7 Q How many times did you go with just Mr. Veve?

8 A When I said just Mr. Soto, I meant Tom and Jaime as
9 a unit -- or whatever.

10 Q With respect to the contract that was negotiated in
11 1975, do you recall, or do you have any knowledge as to
12 whether there are differences between the contract that
13 covers you and the guards, and the contract that covers
14 the porters?

15 A Yes, there is.

16 Q What are the differences?

17 A We have special clauses of how not to be overworked.
18 There were people with days that are split. If there was
19 a day that could not be split in the middle of the week --
20 the uniform rights, changes in this area -- other things
21 which I can't really remember at this time.

22 Q At the time that the contract was reached, do you know
23 whether you received any more or any less increases than
24 the porters received during January of that same year?

25 A You are talking about a pay raise -- equivalency or

AFTERNOON SESSION

March 2, 1977

JUDGE GOERLICH: On the record.

MR. GILLISPIE: General Counsel would call Florancio Garay.

FLORANCIO GARAY

was called as a witness by and on behalf of General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE GOERLICH: State your name and address for the record.

THE WITNESS: Florancio Garay, 688 Sackett Street, Brooklyn, New York 11217.

JUDGE GOERLICH: What is your age?

THE WITNESS: Twenty-nine years old.

JUDGE GOERLICH: Proceed.

DIRECT EXAMINATION

Q (By Mr. Gillispie) Mr. Garay, where do you work?

A I work at One Penn Plaza.

Q What do you do there?

A Security guard.

Q How long have you worked there?

A Two years and four months.

Q Has anyone ever spoken to you about Soto and Veve?

A Yes.

- 1 Q Who?
- 2 A Cuomo.
- 3 Q Who is Cuomo?
- 4 A Chief of Security.
- 5 Q Is he still there at One Penn Plaza?
- 6 A No.
- 7 Q Do you recall when he spoke to you?
- 8 A The day before the first hearing -- arbitration hearing
- 9 Q Where did that conversation take place? Where did he
- 10 speak to you?
- 11 A In the lobby of One Penn Plaza.
- 12 Q What did Mr. Cuomo say to you?
- 13 A If I talked with Tommy Soto. If I signed any paper.
- 14 Q Was this a statement, or were there questions?
- 15 A Questions.
- 16 Q What did you say to Mr. Cuomo?
- 17 A Yes. I talked with Tommy Soto. I have no problem
- 18 with him.
- 19 Q Did you tell him whether or not you had signed a paper?
- 20 A Yes. I told him I signed a paper.
- 21 Q Did Mr. Cuomo say anything more?
- 22 A He said I can lose my job, or I can get laid off.
- 23 Q Had you said anything else?
- 24 A No. That's it.
- 25 Q I ask you to look at this paper.

(Above-referred to document handed to the witness.)

Q I ask you if you signed it? It is Respondent's Exhibit A.

A Yea, I signed it right here (indicating).

Q I ask you to look at this paper which has been marked as General Counsel's Exhibit 5. Did you sign that?

(Above-referred to document handed to the witness.)

A Yes. I signed that too.

Q Let me ask you, Mr. Garay, at the time of the firing when Jaime and Tommy were fired before that, were there workers at One Penn Plaza who spoke Spanish?

A About six or seven guys who spoke Spanish.

Q Do you remember the names of any of them?

A Cabrera, Rivera, Guzman.

Q How about yourself?

A Myself?

Q Do you speak Spanish?

A Yea.

MR. GILLISPIE: I have no further questions of this witness. Thank you, Mr. Garay.

JUDGE GOERLICH: Mr. Levine, do you have any questions of this witness?

MR. LEVINE: I have no questions, Your Honor.

JUDGE GOERLICH: Mr. Berg, do you have any questions of this witness?

MR. BERG: I do.

Q (By Mr. Berg) Are you still employed, Mr. Garay?
Are you still employed by O.M.C.?

A Yes.

MR. BERG: I have no further questions of this witness.

JUDGE GOERLICH: You may step down. You are excused.
That's it, Mr. Garay.

(The witness was excused.)

Next witness please.

MR. GILLISPIE: General Counsel calls Carlos Rivera.

CARLOS RIVERA

was called as a witness by and on behalf of the General
Counsel and, having been first duly sworn, was examined
and testified as follows:

JUDGE GOERLICH: State your name and address for the
record.

THE WITNESS: Carlos Rivera, 2065 Grand Concourse,
Bronx, New York 10457.

JUDGE GOERLICH: Your age, sir?

THE WITNESS: Twenty-six.

JUDGE GOERLICH: Go ahead.

DIRECT EXAMINATION

Q (By Mr. Gillispie) Mr. Rivera, where do you work?

A Right now I am presently unemployed.

Q Where have you worked in the past?

1 A I -- well, I wrote a letter saying that Mr. Calabrese
2 was in the building at the time.

3 Q Why did you write that letter?

4 A I believe he got fired unjustly.

5 Q Can you tell us whether or not it was your idea to
6 write this letter?

7 A No, I discussed this with Tommy and Jaime.

8 Q Let me ask you, Mr. Rivera, when you first started
9 working at One Penn Plaza, would you have known what to do
10 if something went wrong at your job, you personally?

11 A No.

12 Q Do you know what I mean by if something went wrong
13 with your job?

14 A Yes.

15 Q How did you come to know that? How did you find out
16 what you should do?

17 A Well, when I started working at One Penn Plaza first
18 of all Tommy Soto helped me get the job, and so I kept on
19 working -- Tommy Soto kept on teaching me about the con-
20 tract, and what the union is all about, what rights do we
21 have, and so on.

22 JUDGE GOERLICH: Do you have anymore questions?

23 MR. GILLISPIE: I do. I have a short group of ques-
24 tions.

25 Q (By Mr. Gillispie) Around the time of the firing of

1 Soto and Veve, were there any other workers employed at
2 One Penn Plaza who speak or spoke Spanish?

3 A In the building Onafe.

4 Q Porters?

5 A Porters -- I spoke Spanish.

6 Q Were there any other porters who spoke Spanish that
7 you recall?

8 A No, I don't recall offhand.

9 Q Do you know of any guards that speak Spanish?

10 A There is Ulysses. I don't recall their names.

11 Q Do you recall whether or not if there were any other
12 people who spoke Spanish?

13 A Yes, there were quite a few.

14 MR. GILLISPIE: I have no further questions of the
15 witness.

16 JUDGE GOERLICH: Mr. Levine, do you have any questions
17 of the witness?

18 MR. LEVINE: I do.

19 CROSS EXAMINATION

20 Q (By Mr. Levine) Mr. Rivera, you did testify at the
21 arbitration proceeding on behalf of Mr. Soto and Mr. Veve?

22 A The first one or --

23 Q I am talking about the arbitration before Mr. Marlin.
24 Did you testify at that proceeding?

25 A No, I didn't.

1 Q Did anybody from Management speak to you about testify-
2 ing at that proceeding?

3 A At Tommy Soto's hearing?

4 Q Yes.

5 A Mr. Chimez.

6 MR. BERG: Your Honor, I would like to object to the
7 testimony of this witness. He was available and he was
8 not presented at the time of the initial hearing before the
9 Arbitrator. You are being requested to substitute your
10 judgment for the judgment of the Arbitrator. This witness
11 was not present before the Arbitrator. He may present
12 material before you that wasn't presented before the
13 Arbitrator.

14 JUDGE GOERLICH: Your objection is overruled.

15 Q (By Mr. Levine) What did Mr. Chimez say to you, Mr.
16 Rivera?

17 Let's go back a moment. You had a conversation with
18 Mr. Chimez about testifying at the arbitration. Is that
19 correct?

20 A Yes.

21 Q Did that conversation take place in a room at One
22 Penn Plaza?

23 A No, at the hearing -- at the arbitration hearing.

24 Q You had come to Mr. Marlin's office. Is that correct?

25 A I don't know if that was his office.

1 Q Where you were told the arbitration was.

2 A Yes.

3 Q While you were waiting outside, you had a conversation
4 with Chimez?

5 A No, the union delegate and he called me to the back
6 office -- and when I went in with Andy, Mr. Chimez was
7 there waiting.

8 Q What did Mr. Chimez say to you?

9 A Well, we discussed about my job -- and I told him
10 that --

11 JUDGE GOERLICH: Was that Mr. Chimez?

12 THE WITNESS: Mr. Chimez told me to stay away from
13 Tommy Soto and this case.

14 Q (By Mr. Levine) Did he indicate anything else beside
15 that?

16 A I don't recall him saying much more -- but I don't
17 recall.

18 Q Did he offer you anything in exchange for staying
19 away from Mr. Soto?

20 A He offered me a job in another building.

21 Q You took that job?

22 A Yes, I did.

23 Q Have you since been laid off from that job?

24 A Yes.

25 MR. LEVINE: I have no further questions, Your Honor.

125

1 JUDGE GOERLICH: State your name and address for the
2 record, please.

3 THE WITNESS: John Cuomo, 30 Greentree Port, Northport,
4 Long Island, New York.

5 JUDGE GOERLICH: What is your age, sir?

6 THE WITNESS: Forty-eight.

7 JUDGE GOERLICH: Proceed.

8 DIRECT EXAMINATION

9 Q (By Mr. Gillispie) Mr. Cuomo, have you ever been
10 employed by Owners Maintenance Corporation?

11 A I was.

12 Q When was that?

13 A I became employed by Owners Maintenance Corporation
14 in May of 1975.

15 Q How long did your employment continue?

16 A Until January 1, '77.

17 Q What was your position at that time?

18 A Director of Security.

19 Q Was that your position at all times during your
20 employment?

21 A It was.

22 Q What were your duties as Director of Security?

23 A To mainly supervise the security force at One Penn
24 Plaza and/or building operations by Owners Maintenance
25 Corporation.

1 Q Can you tell us what some of your actual duties would
2 entail?

3 A Valuations of reports of losses. Trying to keep losses
4 down.

5 Q What about the personnel side?

6 JUDGE GOERLICH: What did you do with respect to
7 personnel?

8 THE WITNESS: I would supervise their activities
9 throughout the day -- if someone might be goofing off --

10 JUDGE GOERLICH: Could we have a stipulation that
11 this man is a supervisor within the meaning of the Act,
12 Mr. Berg?

13 MR. BERG: I would so stipulate, within the meaning
14 of the Act.

15 JUDGE GOERLICH: Very well, let's proceed.

16 MR. GILLISPIE: At this time I ask Your Honor to rule
17 that Mr. Cuomo, under Rule 611C of the Federal Rules, is
18 an adverse witness. If necessary, General Counsel would
19 like to be permitted leeway in the form of his questions.

20 JUDGE GOERLICH: I have not observed anything in the
21 nature of an adverse witness.

22 MR. GILLISPIE: He was a supervisor of the Respondent

23 JUDGE GOERLICH: You can move at any time under the
24 Rule that he is an adverse witness. The question is
25 whether I'll allow you to proceed under the Rule. He may

1 be a very favorable witness.

2 Some lawyer told me when I first started in the
3 business, you never know what will happen in a lawsuit.
4 Proceed.

5 Q (By Mr. Gillispie) Mr. Cuomo, you were employed by
6 Owners Maintenance Corporation as head of their Security
7 Department. Is that correct?

8 A Director of Security.

9 Q All my questions will be related directly to that
10 period of time so that there will not be any confusion.

11 Would you be acquainted in any way with Mr. Soto and
12 Mr. Veve?

13 A Was I acquainted with them? I knew of them.

14 JUDGE GOERLICH: Could you point them out if you see
15 them in the courtroom?

16 THE WITNESS: Yes. That's Soto there to my right with
17 a brown shirt, and this is Veve with the yellow shirt.

18 JUDGE GOERLICH: I was going to say the gentleman with
19 a moustache, but they both have moustaches.

20 THE WITNESS: Yes.

21 Q (By Mr. Gillispie) Did there at any time arise in
22 your mind a question as to whether or not they were good
23 employees?

24 A It was brought to my attention the value of their
25 employment.

1 Q How was that brought to your attention?

2 A In various ways.

3 Q Did you ever investigate these employees?

4 A I was in a manner investigating.

5 Q I take it then, Mr. Cuomo, there was an investigation
6 with respect to these employees?

7 A I looked into their backgrounds. I looked in to see
8 how they gained employment, and what their duties were
9 and whether they were performing their duties properly --
10 and so on.

11 Q Why did you do that?

12 JUDGE GOERLICH: He testified to that already.

13 When did you do that?

14 THE WITNESS: The actual date I don't know, Your
15 Honor. It was some time -- probably I would say around
16 July of 1975, two or three months after I began as Director
17 of Security.

18 Q (By Mr. Gillispie) Mr. Cuomo, you do know it was
19 some time in reference to when these employees were fired?

20 JUDGE GOERLICH: Just a moment. Do you know if the
21 employees were ever separated from their employment?

22 THE WITNESS: Yes, I think to my knowledge they were
23 separated.

24 JUDGE GOERLICH: Do you recall the date they were
25 separated?

1 THE WITNESS: No, I don't know.

2 Q (By Mr. Gillispie) The evidence indicates they were
3 separated on July the 3rd, 1975. In reference to the time
4 that you knew they were separated from employment, how long
5 had it been since you commenced your investigation of them?

6 A I don't recall exactly. It was some time after I
7 became the Director of Security.

8 Q Was it more than a year before, or six months before?

9 A It was probably about three or four months before I
10 became -- a month after my employment -- about two months
11 before they were discharged, somewhere around there.

12 JUDGE GOERLICH: That is your best recollection?

13 THE WITNESS: Yes.

14 JUDGE GOERLICH: Did you commit any portion of this
15 investigation to writing?

16 THE WITNESS: Did I what, sir?

17 JUDGE GOERLICH: Did you commit any part of your
18 investigation to writing?

19 THE WITNESS: Not personally, no.

20 The information I had gathered and -- I think I for-
21 warded it to my employer, it and an oral report. An oral
22 report, that's right.

23 JUDGE GOERLICH: Very well, go ahead, sir.

24 Q (By Mr. Gillispie) Mr. Cuomo, why did you initiate
25 that investigation?

1 A That was part of my job, part of my duty.

2 Q Mr. Cuomo, did you have any specific reason why you
3 were investigating those employees?

4 A It was brought to my attention that they should be
5 watched specifically by me. Perhaps they were committing
6 acts of thievery in the building. That is what I was
7 assigned to do.

8 Q How was that allegation brought to your attention?

9 A How?

10 Q Who brought that to your attention?

11 A I received a phone call.

12 Q From whom?

13 A From an anonymous person. I don't know who it was.

14 Q Were they connected with the building?

15 A I really can't say.

16 Q They didn't identify themselves?

17 A No.

18 Q This was some anonymous phone call?

19 A I never heard from them again.

20 JUDGE GOERLICH: What did they say?

21 THE WITNESS: The exact words -- generally they said
22 I should keep my eyes on them, they were stealing from the
23 building. They had a bad reputation. They had records,
24 so I should look into their backgrounds.

25 Q (By Mr. Gillispie) Did they give you their names?

131

1 A They did.

2 JUDGE GOERLICH: Whose names did they mention to you?

3 THE WITNESS: James Veve and Thomas Soto.

4 JUDGE GOERLICH: Anyone else?

5 THE WITNESS: Yes, another fellow also.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 HEARING OFFICER: Is he present here today?

2 A I don't see him right off hand.

3 Would you care to refresh my memory?

4 Q Would that have been Mr. Calabrese?

5 A Yes. Mr. Calabrese.

6 Q You got an anonymous phone call about a serious allega-
7 tion, then you proceeded to investigate it?

8 A Yes.

9 Q How did you begin the investigation?

10 A I began to talk to them. I began to watch them. Many
11 times I visually watched them while they were working. I
12 would be in the building. I would be observing them through-
13 out. I had several people watching them.

14 Q Did you ever see them steal anything?

15 A No, I did not.

16 Q Did you ever see them engaging in any illicit activity?

17 A Illicit meaning against the law of New York State, you
18 mean committing a crime?

19 Q Which would support the anonymous phone call that you
20 were investigating?

21 A No, I never witnessed them committing a crime.

22 Q You watched but you found nothing?

I had other people watch.

Who else watched them?

HEARING OFFICER: Did you ever observe anything personal?

1 from which you concluded that the allegations made in the
2 phone call were correct?

3 A No.

4 Q In relation to them stealing from the building?

5 A No, I never witnessed them stealing from the building.

6 HEARING OFFICER: Did the person who called you on the
7 phone mention anything except stealing?

8 A They just said I should watch them. Beside that I don't
9 remember the words. They said they were bad people -- asso-
10 ciated with bad groups. they were stealing from the building.
11 They were associated with bad groups.

12 Q Did they mention the bad group?

13 A Not specifically, just a bad group.

14 To the best of my memory, that is the wording.

15 HEARING OFFICER: Go ahead.

16 Q Did you watch these individuals every day?

17 A I had them watched.

18 Q Who else watched them?

19 A Some of my security officers.

20 Q Did you ever find anything illicit that these two were
21 observed doing?

22 A They never reported anything to me.

23 HEARING OFFICER: You told these other people to watch
24 them?

25 A I was there all the time. I had other duties to perform.

3
1 Q What did you ask them to look for?

2 A I told them to watch them from the time they punched in
3 until the time they were leaving the building. There are
4 many times when I would be advised of facts practically first
5 hand before I came on duty myself -- I wanted to be made
6 aware of the facts, and I received no reports at first to my
7 questions.

8 Q Mr. Cuomo, what did you do in the course of your invest
9 gation? You said you watched them and you had others watch
10 them. What else do as part of your investigation?

11 A There came a time when I requested and received a recor
12 of their criminal activities. This came at a time when I
13 would have been --

14 Q Do you have the exact date? Can you approximate when
15 it would have been?

16 A I would just say probably in the month of June.

17 Q You got a report of this criminal activity?

18 A Their criminal past known as a yellow sheet.

19 Q How did you get that yellow sheet, Mr. Cuomo?

20 A I requested it from a person. He very well gave it to
21 me on my request.

22 Q Let me ask you a few questions about this person. Was
23 this person an employer?

24 A Was the person an employer?

25 Q Yes.

1 A The New York City Police Department.

2 Q Who is the person?

3 A I am not at liberty to divulge his name.

4 HEARING OFFICER: What is that, sir?

5 A I am not at liberty to divulge his name.

6 HEARING OFFICER: I am ordering you to give me his name.

7 A I really don't remember his name -- to tell you the
8 truth.

9 Q Having gotten this yellow sheet you used the term yellow
10 sheet, would it be correct to say you are familiar with what
11 a yellow sheet is?

12 A I am.

13 Q Do you remember whether or not the yellow sheet generally
14 is part of a public record? Could you walk into the police
15 station and take a look at a few yellow sheets?

16 A You might try.

17 Q This yellow sheet that you got at your request from
18 your friend who worked for the police department, whose name
19 we do not know, would it help refresh your recollection if
20 I said that there is a phrase on the bottom of it that says
21 it is to be held that (it is to be held in confidence).

22 HEARING OFFICER: That looks like a white sheet to me.

23 A It's a white sheet.

24 MR. GILLISPIE: I ask to have this marked as General
25 Counsel's Exhibit 12 for identification.

1 dence another copy of this yellow sheet. This is what he
2 based his opinion on.

3 MR. LEVINE: Is Your Honor going to refuse to receive the
4 document? They were legitimately obtained.

5 JUDGE GOERLICH: We are making a mountain out of a mole-
6 hill. This is the information that was gotten from the
7 yellow sheet. The report was substituted and sent to his
8 superior. Let's proceed.

9 Q (By Mr. Gillispie) Tell me, Mr. Cuomo, on the basis of
10 this (indicating) you made a report. I want you to take a
11 look at this yellow sheet itself. I would like you to answer
12 my question about the yellow sheet. Is it in common circu-
13 lation? You haven't answered that.

14 A I don't know what you mean by common circulation.

15 Q I think I will rephrase it.

16 Could you go into a police station off the street and
17 receive it?

18 JUDGE GOERLICH: This does not have any significance in
19 my estimation. I would like counsel to proceed.

20 Did the company go to the police department and get a
21 yellow sheet on each one of the three people? Did you follow
22 that procedure with all three of them?

23 A There were three or maybe four or five. I received in-
24 formation on the three.

25 Q Did you have to make such a request?

1 JUDGE GOERLICH: Just a moment. This was a proceeding
2 of the company? It had a rule that all employees will be
3 fingerprinted?

4 A I would submit to New York State a copy of the finger-
5 prints. If they had police records it would be indicated to
6 me.

7 JUDGE GOERLICH: Was this done to all employees while you
8 were the director of security? Were you responsible for the
9 yellow sheets other than three you have mentioned?

10 A There were no records that I particularly requested.

11 JUDGE GOERLICH: The question was did you receive this
12 information at the same time?

13 A It was a day or two -- a week apart. I don't recall
14 exactly.

15 JUDGE GOERLICH: What did you do with this knowledge?

16 A After conducting my own investigation of the people
17 working in the building I found that they were a pretty
18 close knit group, Veve and Soto and their friends, and that
19 as a general group they had to be watched out for -- and to
20 be especially careful to watch their activities.

21 Q (By Mr. Gillispie) Do you recall the name of the other
22 employee?

23 A The fellow named Brown was the other I recall -- Frank
24 Brown.

25 Q Do you know Frank?

1 A I think he is in the courtroom. I think he is that
2 fellow there in the last seat. The one to the right in the
3 brown shirt.

4 JUDGE GOERLICH: State your name, please.

5 A (By Mr. Minifield) James Minifield.

6 JUDGE GOERLICH: Did you ask for his yellow sheet?

7 A Yes.

8 JUDGE GOERLICH: Anyone else?

9 A Not that I recall -- not the other fellow, but that fellow.

10 JUDGE GOERLICH: I take it you did get the yellow sheet
11 on Brown?

12 A I did for Minifield.

13 I am correcting myself. I thought it was Brown, but it
14 was Minifield. I did not receive a report so I assumed that
15 there was no active report.

16 JUDGE GOERLICH: Go ahead.

17 Q (By Mr. Gillispie) Mr. Cuomo, did you, in the course of
18 your investigation, follow these employees or cause them to
19 be followed, or request that they be followed and watched in
20 the course of their work when you requested this yellow sheet?

21 A I said I followed them. I didn't go around -- like around
22 corners.

23 Q I apologize if it was a mischaracterization.

24 What did you do in the course of this investigation?

25 A Nothing -- I just watched. I just received and reported

1 on reports. I waited and received the report.

2 JUDGE GOERLICH: When did you get the report?

3 MR. GILLISPIE: He said he got no report.

4 JUDGE GOERLICH: No physical report?

5 A Verbal report.

6 Q From whom?

7 A From people who were working on my staff.

8 JUDGE GOERLICH: I thought you said you received no
9 adverse reports from people who were working on your staff?

10 A I had a written report such as this yellow sheet (In-
11 dicating).

12 JUDGE GOERLICH: I thought you said there was no adverse
13 report?

14 A No one ever said Veve committed this crime or that crime.
15 I just got reports. I did have people checking them. I had
16 people checking them in their prescribed duties. I knew what
17 they were doing.

18 JUDGE GOERLICH: Did you receive some sort of a report?

19 A Yes.

20 Q (By Mr. Gillispie) What kind of a report did you receive?

21 JUDGE GOERLICH: Did you receive their records?

22 A No, I did not receive Veve's record. I did receive a
23 memorandum about the crimes that he had been arrested for.

24 Q (By Mr. Gillispie) Did anyone ever tell you in the
25 course of your investigation in the building that either of

1 these employees had committed any crime at the building?

2 A It was never said that they had committed a crime but
3 they were suspect of committing a crime.

4 Q But you couldn't find anything to back that up?

5 A Nothing to back that up -- no.

6 Q All you had to base your suspicions on was one anonymou
7 phone call. That was all the information you received about
8 these people?

9 A I received information from time to time.

10 Q Who were the people that you received information from
11 that you should keep your eye on these two?

12 A Some of the tenants.

13 Q Which ones? What are their names?

14 A I don't recall.

15 Q Do you remember what floor they were on?

16 A No, I don't.

17 Q Do you remember what kind of businesses they had?

18 JUDGE GOERLICH: Did you ever recieve any instructions
19 from anyone connected with the company you should keep your
20 eye on these employees?

21 A Yes.

22 Q Who?

23 A Originally I was told when I first went there by Mr.
24 Viggiano, who was the superintedent of the building. He sa
25 that he had these men in his employ. That they should be

1 Q What was his name?

2 A Mauro Constrastano.

3 Q In addition to Mr. Constrastano and Early did you speak
4 with anyone else about being hired?

5 A I don't believe I did.

6 Q During the course of your employ in that building, did
7 you have people watching Mr. Soto and Mr. Veve in that Helmsley-
8 Spear building? And giving you reports about what they were
9 doing?

10 A I can't count the times. It was daily. I think they
11 would come in and report. He would come in concerning inform-
12 ation for me, or he would come in concerning information for
13 him.

14 Of course there was Mr. Viggiano. I can't really tell
15 you -- I believe almost every day.

16 Q In the course of your testimony, you used the phrase a
17 close knit group, and I believe you went on to indicate
18 finding out that Soto and Veve and some friends such as that
19 phrase would imply became known to you on the basis of that.
20 When you refer to an anonymous phone call about Soto and Veve
21 do you know if it was from anyone in that close knit group?

22 A The information was related to the meetings that were
23 going on.

24 Q What kind of meetings were going on?

25 A I don't know -- I wasn't there.

1 Q You don't know where you got this information that they
2 were a close knit group, Soto and Veve. You don't know where
3 but there were other suspicions you had about them because
4 you investigated them. It doesn't make sense to me. That is
5 your testimony.

6 A I knew they were going to meetings, because people told
7 me about them.

8 Q First, who told you?

9 A Many people.

10 Some employees of mine -- I had even gotten to the point
11 where I was discussing this with law enforcement agencies.

12 Q Were they aware of these meetings and what these meetings
13 were about?

14 A I don't know.

15 Q What did you say when you discussed these meetings with
16 law enforcement management?

17 A I want to know who's down there. Why they are there?
18 Who attends. I don't know why, but they are suspicious. It
19 was that simple.

20 Q Did any law enforcement agency ever respond to that?

21 A I don't -- I never got a report from them. I simply am
22 not aware of it.

23 Q Your investigation of Soto and Veve, how long had they
24 been employed at the time?

25 A It was a matter of a few years. I really didn't take

1 these questions subject to connection. Let's not spend the
2 whole afternoon trying to make a connection which doesn't
3 appear to be forthcoming.

4 Q (by Mr. Gillispie) Mr. Cuomo, you told us that you were
5 a detective in the police department of the State of New York.
6 Would it be common for someone to be arrested for the sale
7 of heroin and in some way for the sale of heroin to be disposed
8 of by a guilty plea with the \$25 fine. That is what is shown
9 on General Counsel's Exhibit 12.

10 A That is what is shown on there.

11 JUDGE GOERLICH: What is show for the second arrest?

12 A The second arrest was for inciting a riot.

13 MR. BERG: I object, this is irrelevant. I object to
14 the whole line of questioning.

15 JUDGE GOERLICH: If I read these records correctly, the
16 police department's yellow sheet doesn't identify any of the
17 information that he received. It would appear that the man
18 is still under indictment. Is that true?

19 A From all of the information I received, the indictment
20 case was through in 1967. They came up with the same dis-
21 position, all our sources show that there were no negative
22 results.

23 Q (By Mr. Gillispie) Having gone over General Counsel's
24 Exhibit 12, and picking up where we left off, under the dis-
25 position of indictment, did you ask Mr. Soto about that arrest?

25

142

1 A No.

2 Q Did you ask Mr. Soto about any of the problems that
3 you apparently had? Did you ask him to respond about that
4 anonymous phone call that you received?

5 A No.

6 Q Did you ask him if he was stealing anything from the
7 building?

8 A No. That would be quite obvious if he was stealing.

9 MR. LEVINE: I object. He said he didn't ask him if
10 he was stealing.

11 Q (By Mr. Gillispie) Do you know what happened to Andy
12 Calabrese? He was also on the report?

13 A I think he still works for the company, Helmsley, the
14 parent of OMC. I am not sure. To the best of my knowledge
15 he was there last year.

16 JUDGE GOERLICH: Did you make any recommendation about
17 the discharge of Soto or Veve?

18 A I made a recommendation after reviewing their employment
19 application that they had answered negatively to the fact
20 have you ever been arrested. They said, "no". To the best
21 of my recollection. Soto, in giving his home address, said
22 he lived on 21st Street. I believe, in fact, he lived in a
23 loft that was known to various law enforcement agencies as
24 the home of a subversive group.

25 Q Was that a very bad report?

1 A To my knowledge, the fact that he was living in a loft
2 building was rather suspicious. Also, the circumstances
3 surrounding that whole building.

4 JUDGE GOERLICH: How were you made aware of them?

5 A I was made aware of it by going to the West 21st Street
6 address. I went there. I visually looked at the building.
7 To the best of my recollection it was a very suspicious
8 building. There was a steel door there. Unless you pressed
9 the buzzer you could not go in. When you came there they
10 took your picture to let you go in to the loft. It was a
11 recognized place as a meeting hall for a group known to the
12 police department, and the federal authorities. I forwarded
13 that information to my employer at that time.

14 Q Did you know they did or what this was based on?

15 JUDGE GOERLICH: Did you actually know?

16 A I did not know. I recommended the discharge. I had
17 no right to recommend anything else. I was at their disposal
18 to do anything.

19 JUDGE GOERLICH: What did you find out with respect to
20 Andy Calabrese? Did you look into his background, too?

21 A I did.

22 Q (By Mr. Gillispie) What did you find out with regard to
23 whether or not he was ever arrested?

24 A I had a conversation with Calabrese. I came to him with
25 a crime that was reported.

30
1 JUDGE GOERLICH: You didn't feel it was necessary to
2 verify whether or not the police records were accurate?

3 A I do not know. I can't do that much. This was done
4 informally.

5 I heard Soto testify for example, that the matter in-
6 volving the arrest record here which is involved in the yellow
7 sheet, that is the matter involving marijuana:

8 JUDGE GOERLICH: Had you spoken to Soto and had he told
9 you it involved marijuana, would that have changed your
10 opinion in any respect?

11 A There was really no time for me to discuss this with
12 him. I found out he had a criminal record and I dismissed
13 him.

14 JUDGE GOERLICH: Why do you distinguish between him and
15 Calabrese?

16 A Because, again, I do not know what the sequence of
17 events are that prompted the occasion. I just took an educated
18 guess. I was advised by the management people who had power
19 to discharge -- I didn't have that power -- that after re-
20 vealing that fact that Veve and Soto had given false informa-
21 tion on their applications, that it was going to possible be
22 grounds for their dismissal, and in Calabrese's case, there
23 were no grounds for dismissal. So then I had a confidential
24 conversation with him in my office, relating to the criminal
25 records, and that is the way it went. Why don't you just put

1 testified at that hearing on their behalf?

2 A Not to my knowledge directly -- no. I know some employees
3 did, but I don't which ones -- let's put it that way.

4 Q Do you know if Andrew Correrri testified?

5 A I do not know Andrew Correrri.

6 Q Mr. Cuomo, I do have a copy of a pink slip which you
7 signed and you gave to Andrew Correrri at 2:30 in the after-
8 noon on some day which is not listed on the fact of it.

9 Do you remember which day you gave that to Mr. Correrri?

10 A It says August 5th on my copy.

11 Q August 5, 1975.

12 A August 5, 1975.

13 Q You said he did not notify OMC of his ability to report
14 for work.

15 A That's right.

16 Q I have a second slip and that one shows the time at
17 2:15. Is this signature on the left yours?

18 A Yes, it is.

19 Q This one says he reported to work at 4:43 p.m. after
20 being told not to report to work this date.

21 A That is correct.

22 Q With two pink slips on the same day, one says he failed
23 to report to OMC and one says he reported to work late in the
24 afternoon after he said he was not coming in for the day.

25 Can you explain these?

1 some way or other the employee did not go to work. He failed
2 to report to them. He failed to report to work for among
3 other reasons the fact that he was at the arbitration hearing
4 Mr. Cuomo ought to be questioned and testify about this.

5 JUDGE GOERLICH: Mr. Levine, are you going to examine
6 the witness about this? I will be faced with this problem
7 when I write my decision.

8 Both exhibits are received in evidence.

9 (Above-referred to documents
10 were received in evidence.)

11 MR. GILLISPIE: I have no further questions of the
12 witness at this time.

13 JUDGE GOERLICH: We will have a five minute recess.

14 (Recess,)

15 JUDGE GOERLICH: On the record. You may proceed, Mr.
16 Levine.

17 Q (By Mr. Levine) Mr. Cuomo, how long did you say you
18 have been employed by the Police Department?

19 A Twenty years.

20 Q Was that your immediate employer before coming to OMC?

21 A No, it wasn't.

22 Q How long after leaving the Police Department was it before
23 you came to OMC?

24 A A little better than a year.

25 Q When did you come to OMC? You testified that you were
hired by James Early. Is that right?

1 Q Who were you told you would be reporting to?

2 A Mr. Viggiano.

3 Q Mr. Viggiano is an employee of Helmsley-Spear, is he not?

4 A He is.

5 Q Did Mr. Viggiano, and Mr. Constrastano, or Mr. Early
6 ask you as part of your duties to investigate the truth or
7 falsity of the employment application of the men who were
8 employed at One Penn Plaza?

9 A Neither.

10 Q None of them?

11 A None of them.

12 Q That was not part of your duties.

13 A That is not so.

14 Q Did you investigate them routinely, all of the employees
15 at One Penn Plaza?

16 A No, I did it on my own. I was not told to do it.

17 Q Is that your answer, sir?

18 A Yes.

19 Q Did you make an investigation of all of the employees
20 employed, employment applications at One Penn Plaza?

21 A No, I did not.

22 Q Did you seek yellow sheets of all of the employees, or
23 did you seek to see if they did have yellow sheets?

24 A Yes -- the sheets were a problem to me. There was not
25 any way of knowing.

1 got some of his facts from the police department. The employee
2 testified. I can see no reason why we are going into all of
3 this.

4 MR. LEVINE: I can see why he did not go to the Bronx
5 Supreme Court. I will withdraw that question.

6 MR. BERG: If Your Honor has been up to the Bronx Supreme
7 Court you would know very well why he didn't go to the Bronx.

8 MR. LEVINE: I have been there. I can understand the
9 import of Mr. Berg's comment.

10 JUDGE GOERLICH: Sir, do you have any further questions?

11 Q (By Mr. Levine) Referring now to the justification of
12 your investigation of Mr. Soto and Mr. Veeve you testified
13 that there were a few reasons for conducting the investigation.
14 One of them was that Mr. Viggiano, when he employed you, do
15 we have the record of the date you were employed? Do you
16 know if it was May 12th?

17 A It sounds familiar.

18 Q Around the middle of May? Answer one way or the other.

19 I think in response to one of Mr. Gillispie's questions
20 you testified that after you came to OMC Mr. Viggiano had told
21 you to keep an eye on them. Is that correct?

22 A I don't remember saying that.

23 Q You don't remember just testifying about that?

24 A I know Mr. Viggiano pointed them out to me and said watch
25 them. They were part of the people -- a group of people I

1 was told to keep my eyes on -- Soto and Veve.

2 Q Mr. Viggiano mentioned those two names to you. Is that
3 correct?

4 A If that is the testimony, that is correct.

5 Q Do you recall what Mr. Viggiano said to you about them?
6 Did he tell you that they are sloppy workers. I want to
7 find out whether or not they are doing their job?

8 A I don't recall.

9 Q Did he say something about them engaging in criminal
10 activities?

11 A No, not specifically.

12 Q Do you recall why it was that he told you to keep an
13 eye on them?

14 A I don't know the reason why he did anything.

15 Q Did he ask you why you should keep an eye on them?

16 A No, I just sort of took it for granted.

17 Q Did he mention them so you would know who to look for?

18 A I never saw Soto and Veve. I was only given the inform-
19 ation and I just sat and watched and searched.

20 JUDGE GOERLICH: At the time you made this investigation,
21 sir, was Soto the union steward?

22 A No, I don't think I even found that out.

23 JUDGE GOERLICH: Did you talk to him during the investi-
24 gation?

25 A No, just common knowledge in the building. In fact, I

1 had a conversation with Soto where he told me that.

2 Q Was that during your investigation where he introduced
3 himself to you?

4 A He introduced himself to melike I asked --

5 JUDGE GOERLICH: Is this after you started your investi-
6 gation, or was it before?

7 A I don't know. It could have been before I started my
8 investigation. There was a time that he came tome. He
9 introduced himself.

10 JUDGE GOERLICH: Did it ever come to your attention tha
11 Soto and Veve were the two most active union participants in
12 the building?

13 A Did it ever come to my attention? Not particularly --
14 no.

15 JUDGE GOERLICH: Did you go down into the main lobby
16 during this period in which you were investigating the matte
17 of the affiliation of the two gentlemen with the union at
18 all?

19 A No -- I mean not as a matter of course -- there were
20 pointed remarks -- no.

21 JUDGE GOERLICH: Did it come up in conversation with
22 Soto like you might have asked him what his duties were and
23 you were told he is shop steward.

24 A At that time he was working the paper. He was putting
25 paper on each floor. He had more accessibility than the

1 JUDGE GOERLICH: I think that has materiality.

2 MR. GILLISPIE: I make a motion to strike Mr. Cuomo's
3 testimony for credibility.

4 JUDGE GOERLICH: Let's proceed. You are wasting a lot
5 of time on matters that are not a part of any review of the
6 Court's decision on this matter.

7 Q (By Mr. Levine) This anonymous phone call, Mr. Cuomo,
8 do you recall how long you were there when you got that phone
9 call?

10 A A couple of weeks. A few weeks after I came. Maybe it
11 was a week, maybe ten days. I don't remember the date.

12 Q Was that phone call at your office/

13 A Yes, sir.

14 Q What time of day was it?

15 A I don't know.

16 Q That is the phone call that was referring to Soto and
17 Veve as having committed crimes in the building, stealing in
18 the building.

19 A That is right. I think I testified at the last hearing
20 that I remember hearing that they were still in the building.

21 Q Excuse me, could you say that all over again.

22 JUDGE GOERLICH: Mr. Levine, the questions have been
23 gone into. If you want to bring out something please do.

24 MR. LEVINE: I don't, Your Honor.

25 JUDGE GOERLICH: Then don't ask him a question before
he answers.

1 or what time they go out. Do they have keys? What time did
2 it happen? There were keys that were available to them as
3 porters. They could get master keys on some pretext.

4 Q If Soto and Veve had access to the floors, or had access
5 to the keys, they could have taken the keys.

6 A I didn't indicate at that time whether or not they had
7 keys.

8 Q Did you ask them directly if they had a key?

9 A I asked the foreman if they had keys, yes I did.

10 Q what was his answer?

11 A They did not have keys to his knowledge.

12 Q When You spoke to Mr. Viggiano about the investigation,
13 at that time did you know that Soto was a shop steward?

14 A When I told him about the phonecall.

15 Q Yes?

16 A Yes, I think I already had known about that.

17 JUDGE GOERLICH: Did you and he discuss the facts that
18 this man was a steward?

19 A No.

20 JUDGE GOERLICH: At that time?

21 A No, it was never made an issue and he was a shop steward
22 one way or the other. If I ever found out about it, it was
23 when he had told me it wasn't an issue that he was the shop
24 steward. It was never made a point that this guy is the
25 shop steward.

1 Q When you had this conversation with Mr. Viggiano, about
2 Mr. Soto and Mr. Veve, did you tell them the source of your
3 information was an anonymous phone call?

4 A I told him about the phone call.

5 JUDGE GOERLICH: Did you say it was an anonymous phone
6 call?

7 A Yes, I told him that I got a phone call, and I told
8 him approximately what the caller had said. He responded
9 with what are we going to do about it, or what are you going
10 to do about it. There have been thefts in the building.
11 That was my job to stop thefts.

12 Q You testified that you gave your report of June 17th to
13 Mr. Viggiano. You had the yellow sheet of Soto and Veve
14 attached to the report. Is that correct?

15 A Yes, sir.

16 Q You are quite certain that you had a copy attached?

17 A I had given him a copy of the yellow sheets.

18 Q This is my last question. Did you carry a gun while
19 you were director of security at One Penn Plaza?

20 A Yes, I did.

21 MR. LEVINE: No further questions.

22 JUDGE GOERLICH: Mr. Berg, you may examine.

23 Q (By Mr. Berg) Mr. Cuomo, are you licensed to carry
24 a gun in the City of New York?

25 A Yes, I am.

1 Q Did you speak to a guard beside Mr. LaFanna?

2 A Yes.

3 Q Which guard?

4 A All of them.

5 Q Pursuant to your investigation of Mr. Soto, and Mr.

6 Veve, in the course of your investigation you had conversati

7 with all the guards and you made them aware that you were par

8 ticularly interested in their activities in the building.

9 A They were all aware that in my opinion and in the opini
10 of other people they may have been responsible for all of
11 the thefts that were being reported in the building.

12 JUDGE GOERLICH: Are you speaking of other people?

13 Are you including in that group Mr. Viggiano? Did Mr. Vigg
14 know of that?

15 A All of our guards knew of it. I would say -- he should
16 have known of it. I had meetings with them. I would speak
17 --to two or more of them. I would speak to two or three at o
18 time.

19 Q About Soto and Veve?

20 A Yes.

21 Q You said before that one of the reasons you conducted t
22 investigation is that you had heard some information about
23 Soto and Veve, around the building, just generally.

24 A Yes.

25 Q At the Arbitration you testified that among the informa
tion you heard that they were trouble makers. Is that correc

1 is that some sort of information you heard that would be
2 generally correct?

3 A Yes.

4 JUDGE GOERLICH: What kind of troublemakers did you
5 ever find that out?

6 A Well, a lot of the construction people I found out had
7 brushes with Veve particularly, Veve separately. He thought
8 he was a wise guy. That type of thing. We had a lot of
9 construction going on in the building. They said there is
10 this guy with a moustache, wavy hair, they would ask me about
11 him. That was part of my duty and I better watch them. He
12 was always on the floors. I don't remember verbatim the kind
13 of information that kept coming back to me.

14 JUDGE GOERLICH: What were they telling you? He was a
15 troublemaker?

16 Q (By Mr. Levine) You didn't keep a record of any of this,
17 did you?

18 A No, I didn't.

19 Q Of course not.

20 JUDGE GOERLICH: When did they involved in other people's
21 problems? I recall testimony to that effect at the Arbitra-
22 tion, I don't remember the testimony, it was something to that
23 effect.

24 Q (By Mr. Levine) Did they get involved in other people's
25 problems?

whether or not he would be replaced on that particular date?

A Yes.

Q What did you tell him?

MR. LEVINE: Could I just be excused for a moment. I am speaking to my next witness.

JUDGE GOERLICH: Sure.

A To the best of my recollection, I am trying to visualize what happened. The next time when I saw him was at the hearing. He was at the hearing that was somewhere around 2:30 p.m. He did not appear for work that day. I had a conversation with him and ordered that the man be held over that night and to reply and say that first what might have been going on at 3:00 instead of going home I was going to file a record of offense and warning that he didn't have to bother coming in tonight at 4:45 p.m. I was at the office and I told him it had been witnessed by another security officer who was here before and he came to work at 4:45, or 4:43 that day.

Q That day did you write up another slip?

A That day I wrote up another slip.

Q I want to ask you this for clarity. Had you told him he was not report to work that particular day?

A Definitely.

MR. BERG: Thank you. I have no further questions.

JUDGE GOERLICH: Any further questions of this witness?

MR. GILLISPIE: Just briefly on this same subject, Your

Honor.

1 Call your next witness.

2 (The witness was excused.)

3 MR. GILLISPIE: Counsel for General Counsel calls Mr.
4 Padilla.

5 ONOFRAE PADILLA

6 having been called as a witness by General Counsel, was
7 sworn by Administrative Law Judge Goerlich and testified
8 upon his oath as follows:

9 JUDGE GOERLICH: State your name and address for the
10 record, please.

11 THE WITNESS: Onofrae Padilla, 10 Palladino Avenue,
12 Manhattan, New York. 10035.

13 JUDGE GOERLICH: Your age, sir?

14 THE WITNESS: Thirty-nine years old, sir.

15 Q (By Mr. Gillispie) What do you do? You have got to
16 speak up.

17 A My job is I am a guard.

18 Q Have you ever in the past worked at One Penn Plaza?

19 A Yes, I did.

20 Q What kind of a job did you have there?

21 A Same thing -- a guard.

22 Q When did you work at One PennPlaza? What period of
23 time?

24 A I started there in 1973 -- I think.

25 Q You stayed there up until when?

1 A I think I worked there all year -- '75, then I was
2 transferred to 199 Church Street, State Insurance Fund.

3 Q Did you work at One Penn Plaza all of 1975? Is that
4 right?

5 A Yes.

6 Q At any time during 1975, Mr. Padilla, did you meet and
7 discuss a contract?

8 A Yes, I did.

9 You are talking about with Mr. Soto.

10 Q You tell me with whom did you meet?

11 A Our contract ran out. But we discussed it. We had a
12 committee -- of meetings.

13 Q Who discussed it with Mr. Soto?

14 A We discussed the contract.

15 Q Did anything come from those discussions with Mr. Soto?

16 A Well -- after that we met with the company man.

17 Q Before this you discussed the contract with Mr. Soto.
18 Did you discuss it with anyone else?

19 A That was with the boys, the other guards, -- yes.

20 Q In addition to the guards, and Mr. Soto, was there anyo
21 else?

22 A Not that I remember.

23 Q Let me ask you this, was Mr. Veve there when you dis-
24 cussed the contract?

25 A When we discussed, yes.

1 Q Soto and Veve and the guards?

2 A Right.

3 Q After you discussed this with Soto and Veve, did there
4 come a time when you met with the company and discussed it
5 with them?

6 A Once.

7 Q Do you remember who was at that meeting?

8 A Yes, I do. We had the union representative there.

9 Q What was his name, do you recall?

10 A Mr. Andy Dunley, and the other one is Mr. Scalfanie.
11 All you want to know is the people who were there?

12 Q Who was there from the company?

13 A By the company I believe it was Mr. Early -- and our
14 ex-boss Mr. Constrastano.

15 Q Was there anyone else there besides those four persons?

16 A There was another guy.

17 Q What was his name?

18 A R-u-d-n-e-r.

19 JUDGE GOERLICH: What difference does it make who was
20 there?

21 MR. GILLISPIE: What I want to establish, Your Honor,
22 is that there was someone there from the company. Something
23 transpired at that moment that counsel for General Counsel
24 feels is material.

25 JUDGE GOERLICH: Ver well.

1 Q Did you have any meetings with the company? Was there
2 anything physical that you gave to them?

3 A Veve's demands.

4 Q How many papers were there in the demands? Do you
5 recall?

6 A I can't recall.

7 Q I am going to give you a document, which is marked
8 General Counsel's Exhibit 5. I would like you to look at
9 it and see whether or not you recognize that.

10 (Above-referred to document handed to the witness.)

T24

11 Q I would ask you whether you recognize that?

12 A This is the demand.

13 Q Are those the same demands that you gave to the company
14 at this meeting?

15 A Yes.

16 Q To whom did you give them?

17 A The union representative presented them to Mr. Early.

18 Q To whom did you give them?

19 A Mr. Early.

20 Q Did Mr. Early say anything when he received those de-
21 mands?

22 A He just looked at it -- and he got a little but upset
23 about it. Then he told us to go back -- and he gave them
24 back to us and told us to revise it.

25 Q He got angry? What led you to believe that?

1 A That's the way I saw that.

2 Q Did anyone say anything about the demands, anyone from
3 the company?

4 A There was somebody else there -- Mr. Constrastano was
5 there.

6 Q What did he say, if anything?

7 A He said something -- that he was a back door lawyer.

8 Q Did he say anything else?

9 A Did he?

10 Q Just think.

11 Q He maybe -- Mr. Soto --

12 JUDGE GOERLICH: You mean he called Mr. Soto the back
13 door lawyer?

14 A Yes, sir.

15 Q At the time that the demands were presented. Is that
16 right?

17 A You are perfectly right.

18 Q Before that meeting with the company, the one in which
19 you gave the company the demands, at any time did you speak
20 with Mr. Cuomo?

21 A At that time -- at one time I was in the lobby -- and I
22 believe I said something to him like good morning -- or
23 anyway, he came up, and he told me that I was conspiring
24 against the company. That he was going to fire me.

25 Q Mr. Cuomo said that?

1 A Right -- and as he was going to the elevator, he said
2 well, consider yourself fired.

3 Q Were you fired?

4 A No.

5 Q Let me ask you once again, it may have been unclear in
6 my question. You said you spoke with Mr. Cuomo in the lobby.
7 Was that before or after you had your meeting with Mr. Early?

8 A I can't recollect.

9 Q are you certain about that?

10 A I know he said that.

11 Q You do remember him saying that to you, are you sure
12 about where it was?

13 A I am positive it was that day.

14 MR. GILLISPIE: Thank you very much, Mr. Padilla.

15 JUDGE GOERLICH: Mr. Levine, do you have any questions?

16 MR. LEVINE: Just a question or two.

17 Q (By Mr. Levine) You say Mr. Cuomo walked up to you. It
18 was Mr. Cuomo, is that correct?

19 A Yes, Cuomo is our boss.

20 Q Did he give you trouble? Did he talk to you about your
21 duties, how to perform your duties?

22 A Well -- did my regular guard duties.

23 Q Did he ever give you any instructions with regard to Mr.
24 Soto and Mr. Veve?

25 A No, he didn't.

1 MR. GILLISPIE: No further questions.

2 JUDGE GOERLICH: Anything further?

3 MR. LEVINE: No.

4 JUDGE GOERLICH: You may step down. You are excused
5 as a witness, sir.

6 (The witness was excused.)

7 JUDGE GOERLICH: Call your next witness.

8 MR. GILLISPIE: Counsel for General Counsel calls
9 Richard J. Isolinni.

10 RICHARD J. ISOLINNI

11 having been called as a witness by General Counsel was sworn
12 by the Administrative Law Judge Goerlich and testified upon
13 his oath as follows:

14 JUDGE GOERLICH: State your name and address for the
15 record, please.

16 THE WITNESS: Richard J. Isolinni, 1 Dickle Road, Scars-
17 dale, New York, 10583.

18 JUDGE GOERLICH: What is your age, sir?

19 THE WITNESS: 48.

20 Q (By Mr. Gillispie) Mr. Isolinni, who is your employer?

21 A Helmsley-Spear.

22 Q Would you tell me your position with that employer?

23 A I have a two-fold management and construction job. I
24 happen to be the property manager of various properties in the
25 City.

1 Q Have you any position with OMC?

2 A I do not.

3 Q How long have you held your dual position function?

4 A Six years.

5 Q You have had the same function for six years?

6 A That's correct.

7 Q Are you familiar with Mr. Soto and Mr. Veve?

8 A Only from seeing them.

9 Q Can you identify them for me? There are a number of
10 other men sittin g in the courtroom. Are you able to point
11 to Mr. Soto?

12 A He is the man with the brown shirt. Mr. Veve is the'
13 man with the yellow shirt.

14 JUDGE GOERLICH: Very well.

15 Q Mr. Isolinni, I am going to give you a memorandum which
16 I would like to have marked as General Counsel's Exhibit 16.

17 JUDGE GOERLICH: Mark it for identification.

18 (Above-referred to exhibit
19 marked for identificationas
General Bounsel's Exhibit 16.

20 Q I would like you to examine the document and tell me
21 if you recognize it?

22 A Yes, it is a memorandum that I -wrote to William Mulhar
23 of OMC.

24 Q As far as you know he is the manager of OMC?

25 A He is the advertising representative.

1 are the managing agent of the property.

2 JUDGE GOERLICH: Very well. You addressed your letter
3 to the contractor, owner or manager of the company?

4 A They are the contractors supplying the maintenance
5 people to do the cleaning at the property.

6 JUDGE GOERLICH: Very well. I am aware of the connection
7 now, go ahead.

8 Q (By Mr. Gillispie) Can you tell me if you know what the
9 ownership is of Owner Maintenance Corporation?

10 A Not very well.

11 Q Can you tell me if there is any joint ownership with
12 Helmsley-Spear and Owners Maintenance Corporation?

13 A I have heard it alleged. I do not know it is a fact.

14 Q More on your part?

15 A Yes.

16 Q Tell me, Mr. Isolinni, on your part, as I understand it,
17 Mr. Viggino is the supervisor, yet your memo is addressed
18 to OMC executive request transfer. Then you request the
19 transfer of three employees. Those are three employees of
20 OMC, are they not?

21 A That is correct.

22 Q Within your normal activities operating out of your
23 firm through Helmsley-Spear, are you normally involved in
24 discussions of transfers of employees from one building to
25 another?

1 A If the building manager indicates that he feels they
2 should be -- yes.

3 Q Has it ever happened before at One Penn Plaza?

4 A Before this happened?

5 Q Had it happened before this time?

6 A Not before this time.

7 JUDGE GOERLICH: Who is the highest person in authority
8 for the Owners Maintenance Corporation at One Penn Plaza?
9 Do you know?

10 A Well, the only man they would have normally working would
11 be Mr. William Muller, regardless of whether he is present
12 in the building or not. They are not located there.

13 JUDGE GOERLICH: Who has the highest priority in the
14 building that represents the company? Do you know?

15 A Offhand, I cannot tell you. I would imagine it would
16 be their supervisor on the property.

17 Q Do you know who he was at that time?

18 A No, I do not. They have so many I really can't recall.

19 JUDGE GOERLICH: Very well.

20 The person who has the highest supervisory capacity on
21 the property is the man by the name of Muller. Is that correct?

22 A That's correct.

23 Q (By Mr. Gillispie) Mr. Isolinni, you are Mr. Viggiano
24 supervisor?

25 A I don't know where he received the information. I don't

1 A Absolutely. We had no contract with them. I could have
2 cancelled it at any time within a month's notice. If you
3 wanted to get rid of these three men you would do that.

4 I never had to.

5 Q Is that because the people were transferred or what?

6 A They were gotten rid of somehow. They were transferred
7 as far as I am concerned. I do not wish counsel to put words
8 in my mouth.

9 Q Mr. Isolinni, if that is the way it appears, I apologize.

10 Would you please mark this as General Counsel's Exhibit
11 17 for identification.

12 (Above-referred to exhibit
13 marked for identification as
General Counsel's Exhibit 17.)

14 Q Mr. Isolinni, I believe you just said to your knowledge
15 these men were transferred.

16 I show you General Counsel's Exhibit 17 and I would
17 ask you to look at it and see if you recognize it.

18 (Above-referred to document handed to the witness.)

19 A Yes.

20 Q Do you know what happened to these men?

21 A No, I do not.

22 Q What does General Counsel's Exhibit 17, which you are
23 holding, mean to you and Mr. Muller?

24 A It is a communication fairly accurately reproduced of
25 the memo which I sent. That is correct.

1 A Well, the decision was mine at his request.

2 Q Your memorandum was marked as General Counsel's
3 Exhibit 16. I am referring to your memorandum to Mr. Muller
4 dated June 18, 1974, referring to the continuing problem.
5 Is that correct?

6 A Yes.

7 Q Your source of information is Mr. Viggiano. You had no
8 independent knowledge of what the continued problems were
9 with Mr. Soto and Mr. Veve?

10 A I do not recall at this juncture in time.

11 Q You don't recall that he spoke to you about the employee
12 application?

13 A That is reasonable, but I don't recall that he spoke to
14 me about anything else, not offhand.

15 Q But you say that he used the phrase continuing problem
16 that either he or you had something else in mind beside the
17 employee application or was that involved with Mr. Calabrese
18 who had a problem, he had been fired from several other pro-
19 perties?

20 A That is probably what it referred to.

21 Q He gave you no idea of a continuing problem with Soto
22 and Veve?

23 A None whatsoever.

24 Q You got no other information from Mr. Viggiano?

25 A Yes, I would have.

1 A It is Prudential Cleaning.

2 Q As a matter of fact, did they underbid OMC?

3 A They did underbid OMC.

4 Q As an employee of Helmsley-Spear, Mr. Isolinni, do
5 you now manage two buildings?

6 A Yes.

7 Q How many buildings in New York are managed by Helmsley-
8 Spear?

9 A There are hundreds in New York that are managed by
10 Helmsley-Spear.

11 Q Do you know whether or not there are buildings which
12 are managed by Helmsley-Spear like One Penn Plaza that are
13 not cleaned by OMC specifically but their buildings are
14 managed by Helmsley-Spear?

15 A Yes, they are not cleaned by OMC.

16 MR. BERG: I have no further questions.

17 JUDGE GOERLICH: Any further questions?

18 Q (By Mr. Gillispie) Mr. Isolinni, the fact remains and I
19 want you to correct me if I am wrong, whenever you feel it is
20 necessary as you did indicate that there are staff memos, and
21 we now have one in evidence. Can you intervene and exert
22 your will for firing policies over OMC? Is that correct?

23 A Mr. Gillispie, OMC was at that time a subcontractor of
24 our. If I feel that I don't want a particular individual
25 for whatever reason my people at the building did feel that

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Second Region

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

In the Matter of:

OWNERS MAINTENANCE CORPORATION,

-and-

THOMAS SOTO,

Respondent,

Charging Party.

Case No.

: 2-CA-14044

26 Federal Plaza

New York, New York

Thursday, March 3, 1977

The above-entitled matter came on for further hearing,
pursuant to adjournment, at 10:00 a.m.

BEFORE:

LOWEL GOERLICH, Administrative Law Judge.

APPEARANCES:

PETER GILLISPIE, Esq.

26 Federal Plaza, New York,
New York; appearing on be-
half of the General Counsel.

JAMES BERG, Esq.

292 Madison Avenue, New York
New York; appearing on behal
of the Respondent.

ALLAN LEVINE, Esq.

-and-

EVA CAREY, Esq.

c/o Civil Liberties Union,
845 Fifth Avenue, New York,
New York; appearing on be-
half of the Charging Party.

I N D E XWITNESSESDIRECTCROSSREDIRECTRECROSS

James L. Early

400

406

414

415

--

424

421

--

--

429

437

--

Ronald Raab

447

450

--

--

EXHIBITSFOR IDENTIFICATIONIN EVIDENCE

Respondent's:

B

430

431

C

433

436

D

446

446

oOo

P R O C E E D I N G S

JUDGE GOERLICH: The trial will be in order.

Call your next witness.

MR. GILLISPIE: Counsel for General Counsel will call Mr. James Early.

JAMES L. EARLY

having been called as a witness by General Counsel was sworn by the Administrative Law Judge Goerlich and testified as follows:

JUDGE GOERLICH: State your name and address, please.

THE WITNESS: James L. Early, 60 East 42nd Street, New York, New York 10017.

JUDGE GOERLICH: Your age, sir?

THE WITNESS: Sixty-three.

Q (By Mr. Gillispie) Mr. Early, can you tell me who your employer is?

A Helmsley-Spear, Inc. and Owners Maintenance Corporation.

Q Can you tell me what position you hold with each of those corporation?

A With Helmsley-Spear I am the senior vice president. At Owners Maintenance I am the president of the corporation.

Q Can you tell me, Mr. Early, what the ownership of Owners Maintenance Corporation is? Who owns it?

A It is an extension of Helmsley-Spear, Inc. It is all owned by a corporate structure of Helmsley Enterprises.

1 JUDGE GOERLICH: Very well.

2 Q (By Mr. Gillispie) Mr. Early, can you tell me what
3 the sanctions are for an employee who has falsely filled out
4 an employment application.

5 JUDGE GOERLICH: What is the question?

6 Q Can Mr. Early tell me what the sanctions is for an
7 employee of Owners Maintenance Corporation who has falsified
8 an application to Owners Maintenance Corporation?

9 A At my level, I don't make these rules. This is a very
10 large enterprise, as you may know, and I am a top executive.

11 Q I don't mean the rules of any one of these subdivisions
12 of the corporates structure. The sanction that a guy tells
13 you that he doesn't know what the punishment would be.

14 In this individual case it was a porter who was discharged
15 for it. Is an employee application an important document?

16 A I don't know what an employee application looks like.

17 Q Mr. Early, do you recall testifying at the arbitration
18 concerning the discharge of these employees?

19 A I testified and the record should stand for itself.

20 Q I understand your position. But please just answer
21 my question.

22 A I will answer if I have something to refresh my memory,
23 to look at. Our present records are more than adequate. It
24 has been some time since I saw it last.

25 JUDGE GOERLICH: Let's not have any argument between

1 counsel and the witness. Put a question to the witness,
2 Mr. Gillispie.-

3 Q (By Mr. Gillispie) You did testify at the arbitration?

4 A Yes.

5 Q I believe you said Mr. Early, that you first became
6 familiar with these individuals at the start of this pro-
7 ceeding some two years ago?

8 A At the time it started, yes.

9 Q Do you know why they were fired, these former employees
10 of your company?

11 A Yes, I was told.

12 Q Why were they fired?

13 A I can't recall.

14 Q You testified at the arbitration proceeding that has
15 been going on for two years. The president of the corporation
16 doesn't know why they were fired.

17 A There was some infraction of the rules. I don't recall
18 what it was. I don't recall. Would you refresh my memory.

19 Q Do you recall the testimony here when we were trying
20 to establish that the former employees were fired or at least
21 they were told they were fired because they lied on their
22 employment application. Does that refresh your recollection
23 Is that true?

24 A I believe it is true.

25 Q Is that the normal sanction imposed by the corporation

1 was arrested for a parking violation on his license, and
2 it indicated that he had been arrested for a parking violation.

3 A I think I would fire him if he refused to divulge that
4 he was arrested. If the application said he was never
5 arrested, and he said no, I would fire him. I don't want to
6 be a judge, jury or a police officer, or an investigator.
7 I take their word for it until when you fill out an applica-
8 tion, unless there is a subsequent complaint or somebody
9 brings it to my attention, then I talk to you and you are
10 discharged.

11 Q You would discharge an individual in all of those cir-
12 cumstances?

13 A That is our policy and in any company that I own, I do
14 have the power to dictate that form.

15 JUDGE GOERLICH: Does your company have a policy with
16 respect to some employees that might be engaging in union
17 activities?

18 A No. Most of our employees are all in unions.

19 JUDGE GOERLICH: Very well. Let me ask you this.

20 How did the discharge of Soto and Veve come to your
21 attention?

22 A Through a grievance at the realty advisory board, which
23 is in my immediate organization who handles the union nego-
24 tiations with Local 32B.

25 Q Is that the first you knew about it?

1 A I believe it was the first I knew about it.

2 JUDGE GOERLICH: Did you discourage people from attend
3 the arbitration?

4 A No -- unless they go to the arbitration stand.

5 JUDGE GOERLICH: Who had the authority to make the
6 discharge in your company?

7 A At OMC it would be Phil Gianez and Bill Muller and
8 anyone of my supervisors that have to do with the problem.

9 JUDGE GOERLICH: Mr. Levine, do you have any questions

10 MR. LEVINE: Yes, I do.

11 Q (By Mr. Levine) Mr. Early, when you say that you first
12 learned of the discharge of Soto and Velez at an agreement
13 in a grievance proceeding, there are several stages of the
14 grievance procedure. I believe that the last time that you
15 testified was at the arbitration before. Is that correct?

16 A It is.

17 Q Was it at that procedure that you first learned of
18 these charges?

19 A No, - I didn't. I learned of it before this -- sometime
20 prior to that. I came down to my office and the matter had
21 been grieved.

22 Q Isn't it a fact that when you learned about these dis-
23 charges, not only because the matter had been grieved, but
24 because there was a distribution of leaflets?

25 A I don't know whether the grievance came first or the

1 I would never know it. It would go the normal route. Their
2 immediate supervisors would recommend the discharge, or the
3 transfer. It would never come to my attention, unless we
4 came into a lot of contact.

5 JUDGE GOERLICH: This did come to you attention, their
6 discharge, did it not?

7 A Yes.

8 JUDGE GOERLICH: At that time, did you make any decisions
9 with respect to them?

10 A Yes.

11 Q What decision did you make? What did you decide?

12 A That the discharge was justified.

13 JUDGE GOERLICH: On what basis did you make that decision?

14 A Because they had lied on their applications. That was
15 brought to me attention by my subordinates.

16 Q When did they show the application to you? I take it
17 that it was at the time the union was attempting to get them
18 reinstated?

19 A Yes, they did.

20 Q Did you decide that they should not be reinstated?

21 A That's right.

22 Q On the basis of information that was given to you by
23 your subordinates?

24 A Information and conditions for relieving them of their
25 jobs.

1 JUDGE GOERLICH: Did this enter into your decision not
2 to reinstate them? The first reason you gave us in substance
3 for your decision to discharge them is that they lied on
4 the applications.

5 A Then all hell broke loose. There were pamphlets dis-
6 tributed. There were parades around the building. They
7 picketed the other buildings that had nothing to do with
8 One Penn Plaza. It looked like they wanted trouble -- so I
9 was willing to give it to them.

10 The mediation panel asked me if I would give them their
11 jobs back. I agreed I would give them jobs in another
12 part of the City, but not in that building. They subsequent-
13 ly turned to just like going the route to arbitration mediation
14 and now this form.

15 JUDGE GOERLICH: Is that still your position?

16 A We will not reinstate them. We will go with the law
17 as far as we have to go.

18 JUDGE GOERLICH: Very well.

19 MR. LEVINE: Can I have just a moment, Your Honor.

20 (Discussion off the record.)

21 JUDGE GOERLICH: On the record.

22 Do any parties have any further questions of this with
23 at this time, before Mr. Berg takes over?

24 MR. GILLISPIE: I do, Your Honor.

25 JUDGE GOERLICH: Very well, you may inquire at this time

1 Q (By Mr. Gillispie) Mr. Early, I think you referred and
2 correct me if I misquote you, parades, picketting?

3 A Yes.

4 Q Let's start with parades. What kinds of parades were
5 they?

6 A I don't know -- what may be -- my use of language is
7 not good. But they stood in front of our building.

8 Q How many of them?

9 A I don't go down and count them. It depends on the re-
10 ports that I get.

11 Q With respect to the picketing, will you explain the from
12 of the picketing.

13 A I was not a witness to it. Again, it depends on what I
14 was told.

15 Q Was what you are referring to as picketing anything more
16 than perhaps two individuals handing out pieces of paper?

17 A I don't -- I told you I was not a witness to it. I would
18 not know except from the reports that I got. There were more
19 than two individuals.

20 Q You don't know?

21 A I do know.

22 MR. GILLISPIE: Thank you, Mr. Early. That's all I have
23 for you.

24 JUDGE GOERLICH: How about you, Mr. Levine, in view of
25 the questions which I put to the witness?

1 MR. GILLISPIE: Objection as to the form of the question.
2 I would just like to make clear whether the you in that
3 question refers to Owners Maintenance Corporation or Helmsley
4 Spear.

5 Q (By Mr. Berg) Owners and Helmsley-Spear?

6 A Yes, we have contracts with many unions.

7 Q With reference to Local 32b approximately how long have
8 you had a bargaining relationship with Local 32B concerning
9 one building or another in the City of New York?

10 A Since 1945.

11 MR. BERG: Thank you, Mr. Early. I have no other
12 questions.

13 MR. GILLISPIE: May I, Your Honor?

14 JUDGE GOERLICH: You may proceed.

15 Q (by Mr. Gillispie) Mr. Early, you testified that you
16 had been in labor relations?

17 A Yes.

18 Q That you take an active part in the arbitration pro-
19 ceedings. You are notified from time to time. You testify
20 at them?

21 A If I am subpoenaed I do.

22 Q But you certainly know about them. Is that your testimony?

23 A Yes.

24 Q Can you tell me approximately how many buildings OMC
25 serviced during 1975?

1 A I guess a couple of dozen buildings -- twenty or twenty-
2 four buildings.

3 Q In 1975 can you recall even approximately how many
4 arbitration proceedings there were concerning problems with
5 OMC employees?

6 A I can't recall -- probably two or three.

7 Q Probably two or three?

8 A That's right.

9 Q Do you know how many arbitration proceedings occurred
10 in 1975, relating to specifically the union at One Penn Plaza?

11 A No.

12 Q Would it surprise you if I told you that it is my
13 recollection that there were approximately two or three?

14 A Arbitrations?

15 Q I believe that is correct, yes, sir.

16 A Not to my knowledge.

17 JUDGE GOERLICH: Mr. Early, I take it that the policy
18 your company, and by that I am referring now to Owners Main-
19 tenance is that you require a written application for employees.

20 A Yes, sir.

21 JUDGE GOERLICH: Are these applications taken before
22 employees are hired or is he hired and then the application
23 must be taken before he is employed?

24 A I am not sure. I don't look over their shoulders. I don't
25 know exactly how it is done.

1 of your negotiations are through the Realty Advisory Board
2 on Labor Relations.

3 Q Did you participate in the guard contract at One Penn
4 Plaza? Were you personally involved in the negotiations
5 concerning certain provisions of that Act?

6 A Yes.

7 Q That negotiation took place without the Employer's
8 Association, did it not?

9 A I am not sure.

10 Q Mr. Early, I am going to show you the demands, along with
11 the bulletin from the Advisory Board. I am going to ask you
12 if you ever saw these?

13 I ask that this be marked as Respondent's Exhibit B.

14 (Above-referred to document
15 marked for identification.)

16 A I believe I have.

17 Q Mr. Early, do you recall whether or not they are copy
18 of the demands which were sent to you to consider in May
19 of 1975 concerning all the building guards between Local 32B
20 and the REalty Advisory Board on Labor Relations?

21 A I don't remember.

22 MR. BERG: I would offer Respondent's Exhibit B in
23 evidence.

24 JUDGE GOERLICH: Any objection?

25 MR. GILLISPIE: I fail to see the relevancy of the
exhibit?

1 A That I felt that the distribution of leaflets, the first
2 ones and the second, because the first one had already been
3 distributed before I had spoken to Mr. Soto, I felt it would
4 make it more difficult to win the arbitration.

5 JUDGE GOERLICH: When did you give him such advise?

6 A I was representing him at the arbitration proceeding.

7 Q Mr. Raab, were you representing Mr. Soto and Local 32B
8 at that proceeding?

9 A Yes, I was.

10 JUDGE GOERLICH: Are you waiving Mr. Soto's privilege?

11 A I didn't hear any objection. I am just answering the
12 question.

13 JUDGE GOERLICH: Do you still represent Mr. Soto?

14 A At this time, no.

15 MR. GILLISPIE: Your Honor, I would like to object to
16 this. This is a question of attorney-client privilege.

17 JUDGE GOERLICH: You don't represent Mr. Soto. Mr.
18 Soto can only raise that, or his attorney for him.

19 MR. LEVINE: I object to these questions and answers,
20 Your Honor.

21 JUDGE GOERLICH: Go ahead, Mr. Berg.

22 MR. BERG: He did object, Your Honor.

23 JUDGE GOERLICH: Go ahead, answer the question.

24 MR. BERG: There has been an objection to the question
25 that I asked. There was an objection to the question that I

1 put to Mr. Raab thus far. I assume that has to do with the
2 attorney-client relationship.

3 JUDGE GOERLICH: His objections are late, and tardy.
4 The evidence is already in.

5 Put a question to the witness and whether he puts in an
6 objection to the witness, about whether the matter is privi-
7 leged.

8 Q (By Mr. Berg) Mr. Raab, you represented Local 32B at
9 many grievances and/or arbitration proceedings? Is that
10 correct?

11 A Yes, it is.

12 Q Can you tell me if it is the general policy of Local
13 32B to institute, or encourage grievances, to picket, or to
14 pass out literature to the general public concerning their
15 grievance?

16 A No, it is not.

17 MR. BERG: Thank you, Mr. Raab. I have no further
18 questions.

19 JUDGE GOERLICH: Any further questions of this witness?

20 MR. GILLISPIE: Yes, Your Honor.

21 Q (By Mr. Gillispie) Mr. Raab, were you present during
22 the entire course of the arbitration before George Mullen
23 in this matter?

24 A No. I believe there were one or two, several days of
25 hearing in that matter. I was not at the first one and possibly
not to the second one. Another attorney from our office was

1 objection and I also wish to note my client's objection.

2 They wish to make it known that they object to the intro-
3 duction of evidence by Mr. Cuomo to the effect that they
4 were involved in alleged subversive activities, which allega-
5 tions were listed with law enforcement agencies. There is no
6 basis for that evidence. It was wholly immaterial for the
7 record. It was summarily introduced to prejudice the case
8 against my clients. Therefore, I ask that it be stricken.

9 JUDGE GOERLICH: Very well, in that respect I took the
10 Arbitrator's award home last night, and I read it. What you
11 have just said brings one sentence to my mind from the
12 Arbitrator's decision. It says that the Company may and I am
13 quoting, "The Company may have had many other reasons for
14 discharging the grievants which it chooses not to air during
15 this proceeding."

16 Obviously that raises the question of whether the Company
17 did have some other reason to discharge these employees and
18 the reason which is stated which I understand to be falsifica-
19 tion of work applications. Of course general counsel claims
20 that there had been unfair labor practices involved.

21 Mr. Berg, did the Company have some other reason?

22 MR. BERG: That's the area that general counsel and Mr.
23 Levine have presented almost, not all of the evidence which
24 was presented before the Arbitrator, and as far as I know, the
25 reason for the termination of the employees was the falsifica-

1 tion of their employment applications. I think the record
2 would so indicate.

3 JUDGE GOERLICH: But were they connected with some
4 alleged subversive activity? That might obviously have come
5 within what was the Arbitrator's way of thinking. But if the
6 Company states that the only reason for the discharge was the
7 falsification of the records I will accept that.

8 MR. BERG: Your Honor, we have no other reason.

9 I will say in response to Mr. Levine's objections to
10 certain questions that I put to Mr. Cuomo and therefore Mr.
11 Cuomo could not respond to my questions.

12 JUDGE GOERLICH: Very well, I might add to that the
13 probabilities are that I won't accept that one statement of
14 the Arbitrator.

15 MR. LEVINE: If I am correct, Mr. Berg has stated for
16 the record that the sole reason for their discharge was the
17 falsification of their employment records. That is a state-
18 ment which I move was clearly irrelevant. I ask that be
19 stricken.

20 JUDGE GOERLICH: I will allow it to stand, I will not
21 give it any consideration unless there is something that has
22 been developed in the record.

23 Mr. Berg, do you have anything more at this time?

24 MR. BERG: I do have some written evidence that I would
25 like to submit at this time. I would like to submit as
Respondent's Exhibit F, G and E, the Arbitrator's briefs. I

186

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

OWNERS MAINTENANCE CORP.

and

CASE NO. 2-CA-14044

THOMAS SOTO

COMPLAINT AND NOTICE OF HEARING

It having been charged by Thomas Soto that Owners Maintenance Corp., herein called Respondent has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director, Region 2, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge in this proceeding was filed by Thomas Soto on December 30, 1975, and served by registered mail upon Respondent, on or about December 31, 1975.

2.(a) Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein, Respondent has maintained its principal office and place of business at 426 Lexington Avenue, in the City and State of New York, and various other places of business in the State of New York, including a location at 1 Penn Plaza, New York, New York, where it is, and has been at all times material herein, continuously engaged in providing cleaning and maintenance services and related services.

(c) At all times material herein, Respondent has been a member of the Realty Advisory Board, (herein called the RAB) a multi-employer association which exists for the purpose, in whole or in part, for collective bargaining with labor organizations including Local 32B Service Employees International Union, AFL-CIO, herein called Local 32B.

(d) At all times material herein, Respondent, as a member of the RAB, has been party to, and bound by, a collective-bargaining agreement between the RAB and Local 32B.

(e) During the past year, which period is representative of their annual operations generally, the employer-members of the RAB, in the aggregate, and in the course and conduct of their businesses purchased and caused to be transported and delivered to their places of business, cleaning materials, and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to their places of business in interstate commerce directly from states of the United States other than the state in which they are located.

3. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4. Local 32B is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

5.(a) On or about July 3, 1975, Respondent discharged its employees Thomas Soto and Jaime Veve.

(b) The Respondent discharged its employees Thomas Soto and Jaime Veve because of their activities in and support of, Local 32B in seeking to enforce said unions' collective-bargaining agreement with Respondent and because said employees engaged in other concerted activity for the purpose of collective bargaining and mutual aid and protection.

6. On or about July 9, 1975 and in early October 1975, Thomas Soto and Jaime Veve, distributed leaflets to the public on public streets outside Respondent's 1 Penn Plaza location, which leaflets protested their discharges and also protested Respondent's alleged anti-union and racially discriminatory employment practices.

7. Since the date of the discharge of the employees, as described above in paragraph 5, Respondent has failed and refused to reinstate, or offer to reinstate, said employees to their former or substantially equivalent position of employment; (a) because of their activities in support of Local 32B described above in paragraph 5(b); and (b) because of their activities described above in paragraph 6.

8. In or about July or August 1975, Local 32B invoked the arbitration procedures of its collective-bargaining agreement with Respondent

on behalf of Thomas Soto and Jaime Veve regarding their discharges by Respondent on July 3, 1975.

9. On or about January 19, 1976, the Regional Director, Region 2, deferred further proceedings on the instant charge to the arbitration proceedings described above in paragraph 8.

10. A hearing on the question of Respondent's discharge and failure to reinstate Thomas Soto and Jaime Veve was held before arbitrator George Marlin on August 5, September 2, October 7 and 11, November 11, and December 9, 1975 and January 13, 1976.

11. On or about April 13, 1976 the aforesaid arbitrator rendered an opinion and award substantially holding, inter alia; (a) that although the discharges of Thomas Soto and Jaime Veve were not for just cause a conclusion that they were discharged because of their union or concerted activities was not sufficiently supported; and (b) that, as urged by Respondent, Thomas Soto and Jaime Veve nevertheless were not entitled to reinstatement to their former positions of employment because of the nature and contents of the leaflets distributed by them described above in paragraph 5.

12.(a) The factual findings and legal conclusions reached by the arbitrator in his opinion and award described above in paragraph 11 failed to resolve the unfair labor practices before him with respect to the discharges of Thomas Soto and Jaime Veve, and their reinstatement rights, in accordance with established Board precedent.

(b) The arbitrator's opinion and award, in failing to find that Jaime Veve and Thomas Soto were discharged because they engaged in activities protected by Section 7 of the Act, as described above in paragraph 5(b), and in failing to order their reinstatement because they further engaged in protected activities as described above in paragraph 6, is contrary to and repugnant to the purposes and policies of the Act.

13. By the acts described above in paragraphs 5 and 7, and by each of said acts, Respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

189

14. By the acts described above in paragraphs 5 and 7, and by each of said acts, Respondent discriminated, and is discriminating, in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

15. The acts of Respondent described above in paragraphs 5, 7, 13 and 14, occurring in connection with the operations of Respondent described above in paragraphs 2 and 3, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 9th day of February 1977 at 10:00 a.m., at 26 Federal Plaza, Room 3614, in the City and State of New York, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the Regional Director, Region 2, acting in this matter, as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Form NLRB-4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases is attached.

Dated at New York, New York this 29th day of November 1976.

Winifred D. Morio
Winifred D. Morio, Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, Room 3614
New York, New York 10007

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE
NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS
PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D.C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted and the filing thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Administrative Law Judge may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board.

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D. C. (or in cases under the San Francisco, California branch office of the Division of Judges, the Presiding Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Administrative Law Judge or Presiding Judge as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Administrative Law Judge will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Administrative Law Judge's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Administrative Law Judge will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

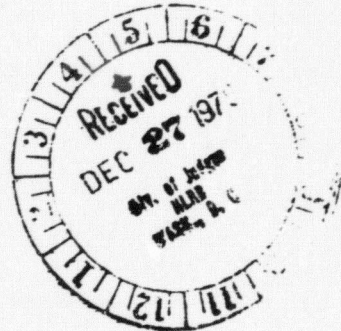
192

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD, REGION 2

OWNERS MAINTENANCE CORPORATION

-and-

THOMAS SOTO



ANSWER

Index # 2-CA-14044

As and for its answer to the above captioned charge
Respondent asserts the following:

1. Respondent admits the material contained in paragraphs 1, 2(a), 2(d), 2(e), 3, 4, 5(a), 8 and 10 of the complaint.
2. Respondent admits that leaflets were distributed as stated in paragraph 6, but denies the characterization of the contents.
3. Respondent has no knowledge of the Regional Director's action stated in paragraph 9 of the complaint.
4. Respondent denies paragraphs 2(b), 2(c), 5(b), 7, 11, 12(a), 12(b), 13, 14 and 15 of the complaint.

Respectfully submitted,

JAMES F. BERG
Attorney for Respondent
292 Madison Avenue
New York, N.Y. 10017
(212) 889-4100

193

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

OWNERS MAINTENANCE CORPORATION

and

2-CA-14044

THOMAS SOTO

MOTION TO CORRECT TRANSCRIPT

Now comes Counsel for the General Counsel and moves that the official transcript of the above-captioned proceeding be amended as follows:

<u>Tr.</u>		<u>Statement</u>	<u>Correction</u>
<u>Pg.</u>	<u>Line</u>		
Title Page	16	Lowel*	Lowell
	18	Gillispie*	Gillespie
	22	Allan*	Alan
	23	Eva Carey*	Eve Cary
6	25	under the	and to
7	1	sub title the first	substitute the phrase
	24	papers in	papers is
	25	allegedly	alleging
17	1	8 8 3*	8(a)(3)
18	3	Cumoz*	Cimusz
26	7	received	gave up
26	8	received	relinquished
33	24	that	through
40	7	Moheca*	Mojica
45	19	four	full
46	3	four	full
49	2	Corrigan	Correra
49	10	Dunlie*	Dunlea
53	24	Elicin*	Eliacin

* Corrections so marked should be continued throughout transcript.

<u>Pg.</u>	<u>Line</u>	<u>Statement</u>	<u>Correction</u>
54	17	or	of
	18	Minafield	Management
59	17	as to	delete phrase
	19	did think	did not think
60	7	concerning	considering
75	19	of the union & . . about that	of the company . . . like that
76	6	Eliacin	Isolini
78	16	. . . him. I was taken on the job. The union . . .	. . . him when I was taken on the job. He replaced a union . . .
78	17	was James . . . when I was . . .	[delete "was"] James . . . when he was . . .
83	14-15	Mr. Dunliel Mr. LeClair informed them . . .	Mr. LeClair and informed him . . .
84	7	Levine	Berg
	10	Incidentally	Subsequently
85	4	what	all that
111	13	Hemingly	Helmsly
112	22	you	they
129	22	Rab ^t	Raab
218	21	adjournment in con- templation of dis- missal	adjournment on con- ditional discharge
222	2	32-J	32B
223	3	32-J	32B
235	15	guards	non-guards
245	19	Veve	Soto
246	3	Veve	Soto

<u>Pg.</u>	<u>Line</u>	<u>Statement</u>	<u>Correction</u>
274	20-21	After many times -after I had spoken to Tom- in other words Pete Jaime - in other words he would . . .	Many times after I had spoken to Tom or Jaime Veve, he would . . .
274	22	and say come down and see Tom	stay away from Tom
275	2	Constrastano	LaFemina
279	5	Rivera	Veve
309	14	us	use
320	16	management	Agencies
321	5	checked employees	checked these employees
	7	in lieu of	in light of
363	21	problems? I recall . . .	problems? A I recall . . .
372	11	Q	A
378	22	Mulhare*	Muller
	25	advertising	management
417	5	Helmsly-Spear	CMC
417		Insert following exchange after line 16	
		Q. Yes, that's correct	
		A. No, they would not necessarily consult with me.	
466	74	names were . . .	names were not

Dated: New York, New York
May 12, 1977

Respectfully submitted,

Peter E. Gillespie

Peter E. Gillespie
Counsel for General Counsel
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10007

196

JD--390--77
New York, N.Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

OWNERS MAINTENANCE CORP.

and

Case 2--CA--14044

THOMAS SOTO

Peter Gillespie, Esq., of
New York, N.Y., for the
General Counsel.

James Berg, Esq., of
New York, N.Y., for the
Respondent.

Allan Levine, Esq.,
and Eva Carey, Esq., of
New York, N.Y., for Thomas
Soto, Charging Party, and
James Veve.

DECISION

Statement of the Case

LOWELL GOERLICH, Administrative Law Judge: The charge filed by Thomas Soto on December 30, 1975, was served by registered mail on the Owner's Maintenance Corp., Respondent herein, by registered mail on or about December 31, 1975. A complaint and notice of hearing was issued on November 29, 1976. The complaint charged that Thomas Soto and James Veve were discharged by Respondent on July 3, 1975, because of their activities in and support of Local 32B Service Employees International Union, AFL--CIO, herein called Local 32B or the Union, in seeking to enforce the Union's collective-bargaining agreement with Respondent and because these employees engaged in other concerted activity for the purpose of collective bargaining and mutual aid and protection in violation of Section 8(a)(3) and (1) of the National Labor Relations Act, as amended, herein referred to as the Act.

Respondent filed a timely answer denying that it had engaged in any of the unfair labor practices alleged.

The case came on for hearing at New York, New York, on March 1, 2, 3, and 4, 1977. Each party was afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, to argue orally on the record, to submit proposed findings of fact and conclusions, and to file briefs. All briefs have been carefully considered. 1/

Findings of Fact, 2/ Conclusions,
and Reasons Therefor

I. The Business of the Respondent

Respondent is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

At all times material herein, Respondent has maintained its principal office and place of business at 426 Lexington Avenue, in the city and State of New York, and various other places of business in the State of New York, including a location at 1 Penn Plaza, New York, New York, where it is, and has been at all times material herein, continuously engaged in providing cleaning and maintenance services and related services.

At all times material herein, Respondent has been a member of the Realty Advisory Board (herein called RAB), a multiemployer association which exists for the purpose, in whole or in part, of collective bargaining with labor organizations, including Local 32B.

At all times material herein, Respondent, as a member of RAB, has been party to, and bound by, a collective-bargaining agreement between RAB and Local 32B.

1/ There being no opposition thereto, General Counsel's motion to correct transcript is granted and the transcript is corrected accordingly.

2/ The facts found herein are based on the record as a whole and the observation of the witnesses. The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of N.L.R.B. v. Walton Manufacturing Company and Loganville Pants Co., 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with the testimony of credible witnesses or because it was in and of itself incredible and unworthy of belief. All testimony has been reviewed and weighed in the light of the entire record. No testimony has been pretermitted.

During the past year, which period is representative of their annual operations generally, the employer-members of RAB, in the aggregate, and in the course and conduct of their business, purchased cleaning materials and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to their place of business in interstate commerce directly from States of the United States other than the State in which they are located.

Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. The Labor Organization Involved

Local 32B is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

Thomas Soto and James Veve were discharged on July 3, 1976, because they falsely answered "No" to the question on their application for employment, "Have you ever been arrested? (Except for traffic violations)." Veve's application is dated January 30, 1974, although on the application it is noted that he "started work January 28, 1974." Soto's application bears the date of May 7, 1973. He started work shortly thereafter in May 1973.

The discharges were submitted to arbitration and, on April 13, 1976, an award was rendered which did not result in the full reinstatement of Soto and Veve. Respondent claims that the arbitrator's opinion and award disposes of the issues raised in the complaint and that the complaint should be dismissed. The General Counsel as strongly maintains that the arbitrator's opinion and award are vitiated by the rule in Spielberg Manufacturing Company, 112 NLRB 1080 (1955), 3/ and that a finding ought to be entered that Respondent violated Section 8(a)(3) by its discharges of Soto and Veve.

The arbitrator considered the following questions which are also the issues before me:

3/ In the Spielberg case the Board held that in order for an arbitrator's award to be binding on the Board the proceedings must appear fair and regular, the parties must have agreed to be bound, and the arbitrator's decision must not have been "clearly repugnant to the purposes and policies of the Act." It is the latter criterion that the General Counsel asserts was not met by the arbitrator's opinion and award in the instant case.

- 5 (1) Did the Company have just cause to discharge the grievants?
- (2) Were the grievants discharged for engaging in union activity?
- 10 (3) Did the leafleting activity engaged in by the grievants constitute sufficient disloyalty toward the Company to justify a denial of reinstatement?
- (4) Was the distribution of leaflets protected by law?

15 In regard to the first question, the arbitrator opined and found:

The record is devoid of any evidence to indicate how the Company may have been prejudiced by the grievants' misrepresentations on their job application, other than the contention that they must have been "untrustworthy" if they lied on their applications. In addition, the grievants had worked for over two years and one year respectively with concededly satisfactory work records.

25 Accordingly, the falsification of job applications by Soto and Veve did not constitute just cause for discharge.

30 Since the foregoing arbitrator's findings meet the criteria of the Spielberg case and are supported by substantial evidence in the record as a whole (see Illinois Bell Telephone Co., 221 NLRB 989 (1976)), they are binding on me and I find that Veve and Soto were discharged without just cause.

35 As to the second question, i.e., "Were the grievants discharged for engaging in union activity?" the arbitrator found:

40 There is a substantial amount of evidence on the record which indicates that the grievants may have, at least in part, been discharged for reasons other than falsification of job applications. This evidence includes; Cuomo's continued investigation of the grievants after several weeks of fruitless observation despite the questionable reliability of an anonymous tip that they had been involved in thefts in the buildings; the fact that the decision to discharge the grievants was made with no investigation beyond Cuomo's concededly incomplete and at least partially inaccurate report; and, Isolini's memorandum which stated that the grievants had been a "continuing problem" without any explanation as to what those problems were. 4/

50 4/ These findings are sufficient to raise an inference of unlawful motivation on the part of Respondent in view of the discharges' known union activities

The mere fact, however, that the Company may have had reasons other than falsification of employment applications for discharging the grievants is not by itself an indication that the grievants were discharged for engaging in Union activity. The Company may have had many other reasons for discharging the grievants which it chose not to air during this proceeding. [Emphasis supplied.]

The latter sentence was brought to the attention of Respondent's counsel and the question was put as to whether Respondent did have "some other reasons" for discharging Veve and Soto. The answer was, "Your honor, we have no other reason." Thus, it must follow that the arbitrator's conclusion that the discharges stemmed from reasons other than union considerations was speculative and does not meet the requirements of the substantive evidence rule. His decision was not only based upon guessed facts outside the record but on no actual facts at all. Such a finding is repugnant to law and violates due process of law. The arbitrator's dictum, therefore, which holds that the discharges were not unlawful within the meaning of Section 8(a)(3), is not binding under Spielberg.

It is clear that Soto and Veve, both union activists, who the arbitrator concedes were discharged "at least in part 5/ . . . for reasons other than falsification of job applications" were fired because of their union activities. 6/ The record is totally barren of any other reasons. Their work records were satisfactory. When "the reasons advanced [for discharge] are not persuasive the [protected] activity may well disclose the real motive behind the employer's action." N.L.R.B. v. Melrose Processing Co., 351 F.2d 693, 699 (C.A. 8, 1965). "[P]roof . . . that the reason given [for a termination] was false warrants the inference that some other reason was being concealed." N.L.R.B. v. Joseph Antell, Inc., 358 F.2d 880, 883 (C.A. 1, 1966). An "inference . . . of discriminatory motivation is sustained and is buttressed by the fact that the explanation [offered by the employer] failed to stand scrutiny." N.L.R.B. v. Griggs Equipment, Inc., 307 F.2d 275, 278 (C.A. 5, 1962). Such was the circumstance in the instant case. I

5/ ". . . if his discharge was even partially motivated by his [an employee's] union activity, there is a violation of §8(a)(3)." N.L.R.B. v. George J. Roberts & Sons, Inc., d/b/a The Roberts Press, 451 F.2d 941, 945 (C.A. 2, 1971).

6/ Among many other things Soto was an aggressive union steward; Veve worked with him and in his absence filled his duties as steward, all of which was known to Respondent. John Cuomo, director of security, testified that he "found that they were a pretty close knit group, Veve and Soto and their friends, and that as a general group they had to be watched out for---and to be especially careful to watch their activities." Constrestano, former director of security, referred to Soto as a "back door lawyer" for the negotiating guards.

am convinced and find that the "real motive"^{7/} for the discharges of Soto and Veve was to discourage membership in a labor organization and to dissuade activities on behalf of a union. The discharges were in violation of Section 8(a)(1) and (3) of the Act. See also ACS Industries, Inc., 188 NLRB 383, 391--392.

As is obvious from the foregoing discussion Soto and Veve were entitled to reinstatement to their jobs both under the terms of the contract (as interpreted by the arbitrator) and under the Act. Nevertheless, they were barred from reinstatement by the arbitrator because they had distributed certain leaflets at the premises of Respondent on July 3, 1975, and early October 1975. Respondent argued before the arbitrator and argues here that the leafleting was unprotected activity for which Veve and Soto were subject to lawful discharge because the leaflets constituted disloyalty on the part of Soto and Veve and were an attempt by Soto and Veve to undermine the Union's position as exclusive representative. On these points the arbitrator found:

Thus, the grievants' conduct in distributing the above described leaflets must be held to have constituted gross disloyalty toward the Company . . . and its ability to do business. Accordingly, the distribution of leaflets by the grievants is sufficient to justify denying them reinstatement to their jobs.

The arbitrator relied on N.L.R.B. v. Local Union No. 1229, International Brotherhood of Electrical Workers [Jefferson Standard Broadcasting Co.], 346 U.S. 464 (1953), and Emporium Capwell Co. v. Western Addition Community Organization, 420 U.S. 50 (1975). In this the arbitrator was in error for the leaflet distribution was protected concerted activity under Section 7 of the Act. Thus the arbitrator's finding was "clearly repugnant to the purposes and policies of the Act" and must be held for naught. Spielberg Manufacturing Company, supra. A review of the leaflets is pertinent.

In the first leaflet which was distributed, the union activities of Soto and Veve were reviewed and the conclusion was drawn that they were not discharged because of "falsification of records" but that such claim was a "pretext." Soto and Veve requested help from their "fellow working people of the building and the adjoining area." Among other things the leaflet related: "The real reason that brothers Jaime Veve and Tommy Soto have been fired from the day shift of porters is because these workers have challenged the racist, discriminatory, anti-labor, anti-women practices in the building. Because they have dared to attempt to organize the workers in the building to stand up for their rights as humans." This charge is almost the precise finding which the General Counsel has requested in this case.

^{7/} See N.L.R.B. v. John Brown, d/b/a Brown Food Stores, 380 U.S. 278 (1965).

5 The distribution of this leaflet, which has not been proved to have been untruthful, was protected under Section 7 of the Act. Its purpose, plain on its face, was to solicit help from fellow workers to rectify the alleged wrongful discharges of Soto and Veve (which later even the arbitrator found to have been in violation of the contract). This was privileged conduct. Dreis & Krump Manufacturing, Inc., 221 NLRB 309 (1975), enfd. 544 F.2d 320 (C.A. 7, 1976). Nor does this leaflet anticipate the bypassing or undermining of the Union as claimed by Respondent.

10 The second leaflet distributed in October, sometime before the scheduled date for the arbitration hearing, noted that the arbitration hearing was set for October 7, 1975. In it was reviewed the facts in respect to the discharges of Soto and Veve which coincided with those related in the first leaflet. Included in addition was, "Don't let these brothers be railroaded out of a job during these times of extreme economic crises by false charges and goon tactics." In the leaflet it was related:

20 Since the firings, the OMC and H-S have conducted a campaign of terror and harassment against employees who support Tommy and Jaime. Members of local 32B S.E.I.U. working in the building as porters and guards have been threatened by Phil Cimusz, Roy LeClaire, and chief of security, John Cuomo (see supporting statements below). John Cuomo, an ex-cop who carries a gun, has gone so far as to physically threaten workers in the building!

25 A request was again made for "fellow working people" to "please help Tommy Soto and Jaime Veve get their jobs back."

30 This headline appeared on the first page of the leaflet:

PUERTO RICAN WORKERS FIGHT TO REGAIN JOBS!!

SUPPORT GROWS! !!

35 An item was devoted to "The Question of Seniority." Under such heading it was stated in part:

40 Our employer, the Owners Maintenance Company (O.M.C.) has not been abiding by the system of seniority as stated by our contract. Blacks, Puerto Ricans, and other minority workers, who have the most seniority, have been discriminated against with respect to promotions, job assignments, preferred shifts, etc.

45 O.M.C. has frustated [sic] and discouraged us from knowing our rights and from going to our union, Local 32B S.E.I.U. In fact, they have threatened union men with firing or layoffs if they notify the union of their grievances. The following cases demonstrate the unjust violation of our rights.

Following the above statement was an article "Black Brother Fights Racism at O.M.C." Reference was made to a grievance filed with the Union and the Human Rights Commission, settlement of which had been violated by the Company. The article ended "WE DEMAND THAT HE BE GIVEN THE JOB HE WAS PROMISED IMMEDIATELY. EXPRESS YOUR OUTRAGE AT THIS INJUSTICE BY CALLING THE HELMSLEY SPEAR OFFICES. 687--6400"

Another item was designated "Worker Reverses Discriminatory Layoff." It records the successful settlement of a grievance. Another article is entitled "Union Brother Fights for Seniority." In the article it is related that employee Fausto Gonzalez has a pending grievance with Local 32B "and needs the support of everyone to win his case." A letter from 20 members of Local 32B to Arbitrator Marlin was reproduced in the leaflet. Among other things, the letter recited ". . . since their [Soto and Veve] dismissal, things have changed greatly for the worse. Almost every employee has been warned not to associate with or support Jaime Veve and Tommy Soto in regaining their jobs."

A final item concerned "Dedicated Worker Wins Partial Victory." The item among other things relates that through the Union a fired employee, Carlos Rivera, was given a porter's job in another building. It was observed:

Without the support his union brothers gave, this partial victory could not have been possible. Carlos thanks everyone for their support.

In a box appeared this language: "Know your union, know your rights," followed by the Union's address and the name of its representative.

Included in the leaflet were pictures of Soto and Veve and several employees whose names appear in the above items. There is also a picture of John Cuomo with this caption: "John Cuomo, gun carrying ex-cop, has threatened workers not to testify or support or associate with Jaime and Tommy." Another picture of seven males bears this caption:

From left to right: Carlos Rivera, fired and reinstated (see article below); Jaime Veve and Tommy Soto, fired (see article page 1); James Minnifield, threatened that he is "next"; Andy Calabrese, fired and reinstated at other building; Teddy Kerin; and Tommy McNally, threatened. 8/

The leaflet was printed in English and Spanish.

8/ On the basis of the credible record before me, I cannot find that the facts and assertions related in the foregoing leaflet are untrue.

I cannot find in this leaflet or from the record as a whole that by its distribution the Union was undermined or short circuited or that Soto or Veve intended to short circuit or undermine the Union. In fact, the Union's address was furnished to workers for their enlightenment. Indeed, the leaflet enhanced the Union's role as the bargaining agent. Unlike the employees involved in Emporium Capwell Co. v. Western Addition Community Organization, 420 U.S. 50 (1975) (relied on by Respondent), Soto and Veve did not, by the distribution of the leaflet, bypass their Union and attempt to deal directly with the employer. Their efforts were in furtherance of their own grievances through the solicitation of employees' help; this was protected activity. Dreis & Krump Manufacturing, Inc., supra. Nor was there disloyalty of a nature which would have caused Soto and Veve to forfeit the Act's protection. See Jefferson Standard Broadcasting Co., 94 NLRB 1507 (1951). Moreover, what was published has not been shown to have strayed from the truth nor been proved to have been deliberately or maliciously false. Cf. Owens-Corning Fiberglass Corporation v. N.L.R.B., 407 F.2d 1357 (C.A. 4, 1969); Texaco, Inc. v. N.L.R.B., 462 F.2d 812 (C.A.3, 1972). The burden was on Respondent to support the claim that the leaflet distribution was condemned by the law. It did not sustain that burden.

Thus, since the leaflet distributions were protected activity under Section 7 of the Act, Respondent by discharging or refusing to reinstate Soto and Veve violated Section 8(a)(1) and (3) of the Act.

Conclusions of Law

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.

2. The Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act for jurisdiction to be exercised herein.

3. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed by Section 7 of the Act, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By unlawfully discharging Thomas Soto and James Veve on July 3, 1975, and refusing to reinstate them, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

5 It having been found that Respondent has engaged in certain unfair labor practices, it is recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It having been found that Respondent unlawfully discharged Thomas Soto and James Veve on July 3, 1975, and has since failed and refused to reinstate them, because of their protected concerted activities, in violation of Section 8(a)(3) of the Act, it is recommended that Respondent remedy such unlawful conduct. It is recommended in accordance with Board policy 9/ that Respondent offer the foregoing employees immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, dismissing if necessary any employees hired on or since July 3, 1975, to fill any of said positions, and make them whole for any loss of earnings they may have suffered by reason of Respondent's acts herein detailed by payments to them of a sum of money equal to the amount they would have earned from the date of their unlawful discharges to the date of an offer of reinstatement, less net earnings during such period, to be computed on a quarterly basis in the manner established by the Board in F. W. Woolworth Company, 90 NLRB 289 (1950), and including interest at the rate of 6 percent per annum in the manner set forth in Isis Plumbing & Heating Co., 130 NLRB 716 (1962).

25 Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby issue the following recommended:

ORDER 10/

30 The Respondent, Owners Maintenance Corporation, New York, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

35 (a) Discouraging union or concerted activities of its employees or membership in local 32B, Service Employees International Union, AFL--CIO, or any other labor organization, by unlawfully and discriminatorily
40 discharging its employees or discriminating in any other manner with respect

9/ See The Rushton Company, 158 NLRB 1730, 1731 (1966).

45 10/ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be
50 deemed waived for all purposes.

to their hire or tenure of employment or any term or condition of employment in violation of 8(a)(1) or (3) of the Act.

(b) In any other manner interfering with, restraining, or coercing any employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act, as amended, to engage in self-organization, to bargain collectively through a representative of their own choosing, to act together for collective bargaining or other mutual aid or protection, or to refrain from any and all these things.

2. Take the following affirmative action which will effectuate the policies of the Act:

(a) Offer Thomas Soto and James Veve immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, discharging if necessary any employees hired to replace them, and make them whole for any loss of pay that they may have suffered by reason of Respondent's unlawful discharge of them in accordance with the recommendations set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(c) Post at its facility at New York, New York, copies of the attached notice marked "Appendix." ^{11/} Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

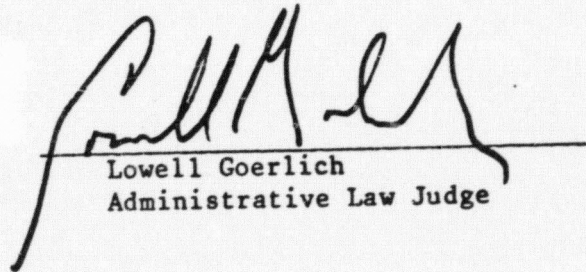
^{11/} In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

207

JD--390--77

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges violations of the Act other than those found in this Decision.

Dated at Washington, D.C. June 16, 1977



Lowell Goerlich
Administrative Law Judge

208

JD--390--77

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a hearing in which we participated and had a chance to give evidence, the National Labor Relations Board has found that we committed certain unfair labor practices and has ordered us to post this notice. We intend to abide by the following:

WE WILL offer Thomas Soto and James Veve their jobs or, if their jobs no longer exist, substantially equivalent jobs.

WE WILL restore the above-named employees' seniority and pay them the backpay they lost because we discharged him.

WE WILL NOT unlawfully discharge any of our employees because of their union affection or because they engage in union activities.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed by Section 7 of the National Labor Relations Act to engage in self-organization, to bargain collectively through a representative of their own choosing, to act together for collective bargaining or other mutual aid or protection, or to refrain from any and all these things.

OWNERS MAINTENANCE CORP.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, 36th Floor, 26 Federal Plaza, New York, New York 10007, Telephone 212--264--0360.

209

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

----- -x

OWNERS MAINTENANCE CORP.,	:	Case No. 2-CA-14044
Respondent,	:	
- and -	:	
THOMAS SOTO,	:	
Charging Party.	:	

----- -x

RESPONDENT'S EXCEPTIONS
TO THE ADMINISTRATIVE
LAW JUDGE'S DECISION

Pursuant to Section 102.46 of the National Labor Relations Board's Rules and Regulations, Respondent Owners Maintenance Corp. respectfully files the following exceptions to the Decision, including findings and Conclusions of Law, of Administrative Law Judge Goerlich, dated June 16, 1977. A Brief in support of these exceptions is attached hereto:

1. Page 2, line 42 - line 48*: The ALJ erred in failing to delineate exactly which witnesses he credited and which he did not and in failing to state the reasons in support of his conclusions.

*Page and line numbers throughout are references to the Decision of Administrative Law Judge Goerlich. ["the ALJ"]

2. Page 3, line 28 - line 30: The ALJ erred in failing to find that Soto and Veve received back pay, pursuant to the award of the arbitrator, through the date on which they were no longer entitled to reinstatement.
3. Page 4, line 50 - line 51: The ALJ's inference is in error.
4. Page 5, line 11 - line 20: The ALJ erred in holding he was not bound by the arbitrator's decision. He further erred in finding that the arbitrator's decision was based on no facts at all. In addition, the ALJ's finding that the award is repugnant to the Act is clear error.
5. Page 5, line 20 - line 23: The ALJ erred in stating that "it is clear that Soto and Veve ... were fired because of their union activities" and that "the record is totally barren of any other reasons."
6. Page 5, line 26 - Page 6, line 5: The ALJ erred in relying on the cases cited in this passage.
7. Page 6, line 7 - line 9: The ALJ erred in stating Soto and Veve were entitled to reinstatement.

211

8. Page 6, line 9: The ALJ erred in failing to find there was no evidence Soto and Veve were discharged for anti-union reasons.

9. Page 6, line 29 - line 34: The ALJ erred in finding that the arbitrator's appraisal of Emporium Capwell Co. v. WACO, 420 U.S. 50 (1975) and his conclusion that Soto and Veve's leafleting was unprotected activity was incorrect and in stating that the arbitrator's finding was clearly repugnant to the purposes of the Act.

10. Page 7, line 1 - line 2: The ALJ erred in requiring Respondent to disprove the contents of the leaflets.

11. Page 7, line 2 - line 10: The ALJ erred in finding the purpose of the leaflet was to solicit help from fellow workers, in relying on Dreis & Krump Manufacturing, Inc., 221 NLRB 309 (1975), enf'd 544 F.2d 320 (7th Cir. 1976), in finding that the leaflet does not attempt to bypass the union, and in finding that the leafleting was protected activity. The ALJ also erred in failing to find the leaflet was distributed to the general public for the express purpose of bringing general public pressure to bear on Respondent.

12. Page 7, line 10 - line 11: The ALJ's statement that the second leaflet was distributed "sometime before the scheduled date for the arbitration hearing." The ALJ erred in failing to state arbitration hearings had by then already been held on August 5, 1975 and September 2, 1975.
13. Page 8, line 13 - line 17: The ALJ erred in failing to find that the leafleting took place against the express warning of Soto and Veve's union and in failing to find that the letter written directly to the arbitrator by Soto and Veve was not seen or approved by the union which was presenting their case.
14. Page 8, line 46 - line 47: The ALJ's footnote is in error and is, in any event, completely irrelevant.
15. Page 9, line 1 - line 20: The findings contained herein are in error, and the reliance on the cases cited is incorrect. The ALJ also erred in failing to find that the second leaflet was distributed to the general public for the express purpose of bringing general public pressure to bear on Respondent.
16. Page 9, line 22 - line 24: The ALJ's finding is in error.

17. Page 9, line 35 - line 44: The ALJ's Conclusions of Law 3, 4 and 5 are in error.
18. Page 10, line 1 - line 23: The ALJ's remedy is incorrect in its entirety.
19. Page 10, line 30 - Page 12: The ALJ's recommended order is incorrect in its entirety.
20. Appendix: The ALJ's recommended notice is incorrect in its entirety.

214

CONCLUSION

~~For all of the foregoing reasons, the ALJ's~~
Decision should be reversed and the complaint dismissed in
its entirety.

Dated: New York, N.Y.
July 11, 1977

Respectfully submitted,

PROSKAUER ROSE GOETZ & MENDELSON
Attorneys for Respondent
Owners Maintenance Corp.
300 Park Avenue
New York, New York
(212) 593-9000

Of Counsel:

Marvin Dicker
Jonathan L. Sulds
-and-
James Berg

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

OWNERS MAINTENANCE CORP.

and

Case 2--CA--14044

THOMAS SOTO, an Individual

DECISION AND ORDER

On June 16, 1977, Administrative Law Judge Lowell Goerlich issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the General Counsel filed a brief in support of the Administrative Law Judge's Decision and a letter in reply to Respondent's exceptions, and the Charging Party filed a brief in answer to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge, to modify his ^{1/}Remedy, and to adopt his recommended Order.

1/ In accordance with our decision in Florida Steel Corporation, 231 NLRB No. 117 (1977), we shall apply the current 7-percent rate for periods prior to August 25, 1977, in which the "adjusted prime interest rate" as used by the Internal Revenue Service in calculating interest on tax payments was at least 7 percent.

216

D--2939

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Owners Maintenance Corp., New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. September 19, 1977

John H. Fanning, Chairman

Howard Jenkins, Jr., Member

Betty Southard Murphy, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

0 217
NATIONAL LABOR RELATIONS BOARD
Docket No. THOMAS SOTO, PORTER
1 PENN PLAZA
NEW YORK, N.Y. *ALB*

In the no. _____
Date _____
No. Pages _____
Reporter *Court Reporter* July 9, 1974

Joint Industrial Grievance Committee
292 Madison Avenue
New York, N.Y.

Dear Sir,

I request to testify on behalf of Mr. Andy Calabrese at the hearing concerning his unjustifiable firing. I have worked at 1 Penn Plaza for over one year as former acting foreman of the day porters. I know from the experience of countless conversations with Mr. Cimunz and Mr. McManus about their attitude towards Mr. Calabrese which is one where they consider him a strong union man, who defends the rights of the men and will not hesitate to take a legitimate grievance on behalf of any man, to the union. On many occasions in my past capacity as acting foreman Mr. Cimunz and Mr. McManus have told me of their desire and plans to "get rid" of Mr. Calabrese by one means or another. The real reason Mr. Calabrese is being fired is because he recently fought on behalf of a man who had been removed from his job and replaced by a non-union man. Mr. Calabrese also recently supported the view of adherence to seniority in the placement of different jobs in the building which infuriated the supervisor Mr. McManus.

Mr. Calabrese is the shop steward of the day porters and as myself and other workers is aware of the discriminatory practices against union men in the building by the company. I also as former acting foreman have heard views expressed by Mr. Cimunz that would throw serious doubt on the companies credibility concerning Mr. Calabrese and concerning the employment of Minorities, where the company has actually considered the racial characteristics of people who are persuing employment.

During the day of the alleged incident I was in charge of the day porters because of the recognized relationship which I have established with the men and the company due to my being the former foreman prior to my recent resignation of that position.

Thomas Soto, Porter
July 9, 1974

218

Page 2

I can fully attest to Mr. Calabrese' whereabouts during the time in question and to the fact that Mr. Calabrese card was pulled by the company on that day as on many other occasions with all the men.

I have much to say concerning this matter, please allow me to testify on behalf of Mr. Calabrese and the unions behalf.

I fully agree with the unions view that Mr. Calabrese be reinstated at 1 Penn Plaza with back pay because I know the real reason behind his being fired.

Yours truly,

Thomas Soto

Thomas Soto.

*Sworn to before me -
this 9th day of July 1974*

Errol Dalling

EDMOND DOLLINGER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-5460570
Qualified in New York County
Commission Expires March 30, 1976

219

NATIONAL LABOR RELATIONS BOARD
 Case No. _____ OFFICIAL EXHIBIT NO. 204
 Disposition { ✓
 Rejected ✓ Court new
 Matter of Joint Industrial Grievance Committee
 Date _____ Witness _____ Reporter ~~Court Reporter~~ LEGAL

Thomas Loto
 1 Penn Plaza
 N.Y., N.Y.

Dear Sir,

Regarding the complaint that I put forth
 behalf of all the day porters concerning the timing
 of relief periods by the company (conced), I hereby
 request that Carlos Rivera, Ray Mayica, James
 Minnifield, Andy Calabrese, Jaime Vave and myself
 all be allowed to testify concerning this question.

From the very beginning of my employment
 at 1 Penn Plaza (May 1, 1973) the day porters have
 granted a 20 minute relief period in the morning
 also during the afternoon. The company and its
 representatives Mr. Cimenz and Mr. McManus
 have knowingly made this concession in order to
 stimulate better work habits. During my tenure
 as acting Foreman (June 73 - March 74) I received
 direct authorization from both Mr. Cimenz and
 Mr. McManus. In fact I informed my union
 delegate "Andy" of these better conditions
 August of 73, and again in December 73 and
 again in February 74.

Countless times during the past 15 months the day porters (regular and relief or temporary) have had this better condition and have placed it in full. The men regularly have these with the full endorsement of the company and its representatives Mr. Cimuz and Mr. McManus. If need be we can obtain statements from different persons to attest to this long established fact. On at least 50 occasions during the 15 months the different day porters have taken their relief periods in the presence of both Mr. Cimuz and Mr. McManus. And as recently as two weeks ago Mr. McManus and the new foreman Mr. Nelson Timmons ^{and myself} endorsed this fact. On many occasions Mr. Cimuz and Mr. McManus have indicated to me their satisfaction with the higher production of the men and its direct relationship to relief and a general sense of pulling together between men and the men, this latter atmosphere I help create as the acting foreman.

Mr. Cimuz, in an effort to prevent this better condition being practiced at Penn Plaza from becoming formally legitimized in contract form, stated to me that if any man attempted to establish the relief as a better condition of this building he would deny knowledge of the entire sequence of events.

But on different occasions he has verbally raised this matter in full view of the men. One such occasion during this past week he entered our locker and everyone was on coffee break together he then indicated us all that he didn't mind us having but that we should not all do it at same time! During my absence last so he raised the question again with Andy Calabrese who was at the time taking for me as acting foreman.

I could go on and on and give example after example in support of what everyone knows which includes management, the men and the union and that is that we have actually been practicing this better condition of building for at least the last 13 months.

The real reason for this attempt to take these breaks away, lies in the roots of the crisis in the building the firing of Andy Calabrese and the company's attempt to threaten and intimidate the into not supporting their union brothers.

222

NATIONAL LABOR RELATIONS BOARD

April 14, 1975

To: Union Delegate, Local 32B SEIU

Reported

SEIU
COUNTY

Dear Union Brother: RE: 4405

The following letter is being written to our Union for the purpose of making our views known on the question of what we desire as new benefits and increases in wages for any new contract which may be negotiated with the company. In addition, we are listing a number of inequities, i.e. rights, and benefits which are included in our expired contract but which the company has not yet begun to enforce in a consistent way. This letter has the general endorsement of the majority of the security officers (Guards) in our building and we greatly appreciate and thank the Union for this opportunity to address it.

We want 10 paid sick days after 1 year of employment. No calendar year requirement and to be paid from first day of illness.

We want a cost of living clause in our contract, so that in the event that inflation eats away our wage increase the Company would be required to make up the difference. The difference to be calculated from the regional Consumer Price Index which is made public at the end of the year.

We want the same increases in Pension benefits that the Porters recently received -- see special bulletin issued by the Union on Jan. 13, 1975.

Any employee required to perform jury duty should be paid the difference between jury duty and regular pay. This difference should be paid the following week in a manner identical with the way sick pay is paid. Employees should not be made to suffer an unnecessary waiting period, payment should be prompt!

We want one additional holiday -- similar to the Porter's new contract.

The new contract should increase Major Medical to 10,000 (same as Porter's). The Medical plan should include a dental plan covering dependents where the employee pays a percentage of expenses and the Medical plan covers the rest. Also, there should be a plan for helping to pay for visits to the doctor other than Major Medical. That is, less than \$200, where the plan pays for a percentage of expenses under \$200.

Life insurance should go up to \$5000 in July 1976 - same as the Porters.

We also want a second paid day for annual health center visit.

We want 2 weeks vacation after one year employment beginning immediately; 3 weeks after 2 years employment beginning immediately -- no calendar year requirement.

April 14,

223

We want premium pay for Sat. and Sun. work, i.e., a special rate of 15% more for Sat. and Sun. for having to give up these important days which we might otherwise spend with our families.

We want a special rate (15% increase above our present hourly rate) for 2nd and 3rd shifts.

We want our next contract to expire the same date that the Porters new expires -- December 1977. In this way, both the Porters and Security officers will have their next contract (1978) negotiated at the same time, giving us more strength in the building. We feel that this is an important demand.

On the crucial question of future wages, we want the following because of the current economic crisis our real wages have been decreasing. Inflation is swallowing up our pay checks. We are sure that the Union understands this well. Therefore, we compel the Union to seek to get parity in wages with the Porters by December 1977. At present, we gross \$168. The Porters gross \$192.28. The Porters are scheduled two \$15.00 increases in Jan. 76 and Jan. 77 bringing their gross at that time (not calculating the cost of living - if it applies) to \$222.28 -- that's what we want by Jan. 77. At present the difference in salary is \$24 -- so what we are asking for is two \$22 increases for Jan. 76 and Jan. 77 which would give us parity.

We want 15 minutes prior to punch-out time to be able to wash up and change clothes. At present we are all required to come in early so that we can change our uniforms on -- we give generally more than 15 minutes of our own time for this.

We want two personal (paid) days to be able to attend to personal business.

We understand the difficulty of obtaining all our requests but we feel confident that our union will do the best it can. We thank you in advance.

The following are the inequities we mentioned above.

At present relief and part time non work in the building. They have regular days and hours when they work. They should not be used by the employer to take away over time from the regular, full time employees -- what good does it do to have a clause stating that overtime is to be equally shared amongst regular full time employees, if the company simply calls on a relief or part time man or even brings in a new non union man to work for straight where otherwise these hours would be given as overtime to the regular, full employees as the old contract states. We would like for the union to assure that this illegal practice by the employer is ended immediately.

The rules and guidelines regarding seniority (in the present contract) respect to replacements, shifts and preference for posts are not being observed. Employees are indiscriminately shifted around, shifts are forcibly changed -- all without regard to seniority. New men with less seniority at times get preferred day shifts and preferred posts -- we want an end to this discrimination against men with seniority.

In the past many of us have been required to work an 8 hour shift without a lunch break. Then the policy changed. It is not clear to us

April 14, 1975

224

whether there exists a state law requiring a 1/2 hour lunch break (we think there is such a law). But any way, we want a 1/2 lunch for all employees as a right a not as something that is at one moment given and then taken away.

Even though the contract (expired) states there should be no split shifts -- many of us do in fact work split shifts! And even though the contract entitles every employee to 2 consecutive days off out of 7, some of us because of our split shifts actually don't get two days off! We want for our contract to be enforced in all respects.

Even though our contract puts the responsibility for supply and maintenance of uniforms on the company -- some of us have been forced by circumstances to purchase uniforms ourselves and pay for cleaning at times. Many times we are forced to share one coat between many of us even though the contract mentions about providing adequate apparel.

Security officers should not be required to do the starters job unless they get starter wages. At present starters make \$40 more than us and we are often called on to fill in for the starter.

Checks for security employees of the 2nd and 3rd shifts should be given to them on Wed. night. Recently this policy has been introduced, we hope it remains and it should be written into the new contract.

We are confident that our delegate Andy and our Union, Local 32B SEIU will do their best, as always, to assist us in straightening out these problems.

Respectfully yours,

SECURITY OFFICERS (Guards) 1 Penn Pl

Benjamin Rivera
 Guillermo Garcia
 Vicente Hernandez
 Enrique Rodriguez
 Wilfredo Gonzalez
 M. Rodriguez
 J. Patacano
 J. Amador
 Frank N. Fernandez
 Joseph Acosta
 Delgado Brown

John Blacis
 Joe Cabana
 Donald Gonzalez
 Pedro Gonzalez
 Joseph Benoit
 Richard A. Garcia
 James Garcia
 William Garcia
 Frank Rodriguez
 Joe C. C. C.
 Angel Colon

P. S.

In addition to the above, we would like the Company to be required to provide what is stated in our expired contract with respect to sanitary arrangement. Our contract provides us with a restroom with soap, towel and washing facilities exclusively for employees servicing and maintaining the building. At present we have been allocated a small bathroom: 1 commode and 1 small sink which is used by construction workers, truck drivers and anyone else who is on the loading dock where it is located. No soap dish is provided. We have about 30 security officers who need facilities and in addition, 50 persons from the above groups use this bathroom every day. 80 people per day in one toilet! We would like adequate sanitary arrangements.

We also want a 15 minute break before lunch and a 15 minute break after lunch to be provided for all security officers whose job requires them to stand during their 8 hours of work.

On Thursday, July 3, 1975, just before the July 4th weekend, two Puerto Rican porters were fired from the building at 1 Penn Plaza. The building management (Helmsley Spear, Inc.) headed by Mr. Viggiano and the Owners Maintenance Company, headed by Phil Cimunz and Roy LeClaire, fired Jaime Veve, the porter who cleans the outside of the building and Tommy Soto, the shop steward who takes care of the bathrooms in the building. The pretext for the firing was "falsification of records", with no further explanation or specifics given at the time of the firing.

WHAT IS THE REAL REASON FOR FIRING THESE TWO WORKERS?

NATIONAL LABOR RELATIONS BOARD

Case No. OFFICIAL EXHIBIT NO.

Dispute in

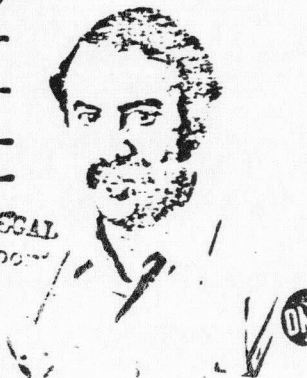
involved

Employer of

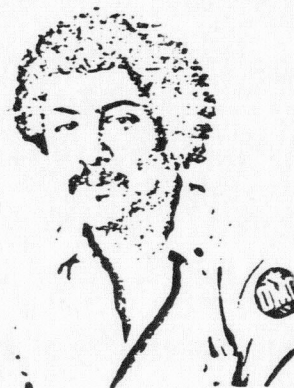
Witness

Pages

Report J. LYNNE SEGAL
Court Report



Tommy Soto — shop steward, bathroom man



Jaime Veve — outside man

Both Jaime Veve and Tommy Soto were the first Puerto Rican porters in the day shift in the building. From the very beginning of their employment they worked together with other employees to improve the working conditions and end all discriminatory practices directed against the employees of the building by Helmsley Spear and the Owners Maintenance Company.

Jaime Veve and Tommy Soto, along with other employees in the building forced the two above companies to hire the only two Black American day porters who work in the building at present. They pointed out to the company the fact that their hiring practices were discriminatory. The fact that relatives and friends of the top circles of the OMC and Helmsley Spear were being given jobs in the building while poor people, Black and white, who had submitted applications to OMC months before, were being told that there were no jobs.

Jaime Veve and Tommy Soto organized support for the Day Matron when the OMC reduced her working hours while at the same time increasing her work load in violation of her contract.

These two brothers have fought for the rights of all workers. When the company harassed and threatened or fired a worker unjustly, or violated the contract of the guards, of the porters, of the matrons, or of any other workers, Jaime and Tommy assisted the injured party in going to the union for relief. Recently, when the guards contract expired they helped the guards draw up a set of demands for the new contract. For this, the company has spread rumors about them and has vowed to get rid of them.

The real reason that brothers Jaime Veve and Tommy Soto have been fired from the day shift of porters is because these workers have challenged the racist, discriminatory, anti-labor, anti-woman practices in the building. Because they have dared to attempt to organize the workers in the building to stand up for their rights as humans. Don't let these brothers be railroaded out of a job during these extreme times of economic crisis by false charges. The OMC and H-S, Inc. cannot find one ounce of dissatisfaction with the actual work of these two employees therefore they have resorted to these phoney charges of falsification of records after Jaime Veve has been working for over one year and Tommy Soto has worked for over two years in the building.

Fellow working people of the building and the adjoining area please help Tommy get their jobs back.

Jaime Veve

To help Jaime and Tommy call 929-6521.

Tommy Soto Jaime Veve

ONE PENN PLAZA

227

227

Vol. 1, No. 1

Disposition

October, 1975

Dear Brothers and Sisters,

You have just received the first issue of our newsletter. We the workers at 1 Penn Plaza, members of Local 32B, S.E.I.U., see this newsletter as our direct voice to communicate to our fellow union members, friends and the general public. We want this newsletter to inform ~~you of what is happening~~ in our building. We intend to publish all injustices committed against the workers in the building. We will also include articles explaining our union contract and how it can be used to protect our rights. We hope that you find this newsletter informative. We welcome your support in our struggle against injustice. For further information please call 741-0633.

PUERTO RICAN WORKERS FIGHT TO REGAIN JOBS!! SUPPORT GROWS! !!

Arbitration Hearing Scheduled
for Oct. 7, 1975



Tommy



Jaime

The Question Of Seniority

On Thursday, July 3, 1975, just before the July 4th weekend, two Puerto Rican porters were fired from the building at 1 Penn Plaza. The building management (Helmsley Spear, Inc.) headed by Mr. Viggiano and the Owners Maintenance Company, headed by Phil Cimusz and Roy LeClaire, fired Jaime Veve, the porter who cleans the outside of the building, and Tommy Soto, the shop steward who takes care of the bathrooms in the building. The pretext for the firing was "falsification of records", with no further explanation or specifics given at the time of the firing.

WHAT IS THE REAL REASON FOR FIRING THESE TWO WORKERS?

Both Jaime Veve and Tommy Soto were the first Puerto Rican porters in the day shift in the building. From the very beginning of their employment they worked together with other employees to improve the working conditions and end all discriminatory practices directed against the employees of the building by Helmsley Spear and the Owners Maintenance Company.

(Continued on page 3)

Seniority is the length of time an employee works for an employer. It starts on the date that a worker is hired. Seniority is not only applicable to layoffs, but in most union contracts, such as ours, seniority is the major consideration with respect to promotions, job assignments, preferred shifts, and the filling of any newly created jobs. In most industries, Blacks, Latins, and other minorities have the least seniority because they are the last to be hired. Therefore, when layoffs occur, they are the first to go.

However, in our building, 1 Penn Plaza, the opposite exists. Our employer, the Owners Maintenance Company (O.M.C.) has not been abiding by the system of seniority as stated by our contract. Blacks, Puerto Ricans, and other minority workers, who have the most seniority, have been discriminated against with respect to promotions, job assignments, preferred shifts, etc.

O.M.C. has frustrated and discouraged us from knowing our rights and from going to our union, Local 32B S.E.I.U. In fact, they have threatened union men with firing or layoffs if they notify the union of their grievances. The following cases demonstrate the unjust violation of our rights.

page 2

Black Brother Fights Racism At O.M.C.



James

Union Brother James Brown began working for the Owners Maintenance Co. (O.M.C.) as a porter more than 5 years ago. He had 5 years' seniority at 1 Park Ave. when he applied for the position of porter-security, a job that had been held only by white employees up to that point. The O.M.C. and Helmsley Spear (H.S.) gave James the run-around when he inquired as to how he could obtain this position. When an outside person was brought in for the job, James initiated a discrimination suit against the O.M.C. with the Human Rights Commission. Shortly after the suit was begun, Brother James was fired!

James then filed a grievance for unjustified discharge with our union, Local 32B, S.E.I.U. At a hearing scheduled to determine his case, James won reinstatement with back pay for lost time. At this same hearing, the O.M.C. approached James about settling the pending discrimination suit. The O.M.C. agreed he would get the next job opening for porter-security at 1 Park Ave. if he withdrew his suit. James agreed to this.

A short time after his return to work at 1 Park Ave. the O.M.C. transferred James to 1 Penn Plaza, where he presently works on the night crew as a porter. While working at 1 Penn Plaza he learned that the job of porter-security that he was originally promised, was available again.

The O.M.C. again hired an outside person, breaking the agreement it made. Brother James again returned to the Human Rights Commission and re-opened the case. In the last month, the position of porter-security has once more become available at 1 Park Ave. It has been offered to several men now employed at 1 Penn Plaza, even though they have much less seniority than James and despite the fact

(Continued on page 4)

Worker Reverses Discriminatory Layoff

Union Brother John Eliacin began working as a security officer at 1 Penn Plaza in September of 1974. He is an excellent worker and has several years experience in the security field. In August of 1975, even though John had seniority over other, newer employees, he was laid off. With the support of his fellow workers, John went to the union and filed a grievance against his discriminatory layoff.

JOHNS VICTORY IS OUR VICTORY

In negotiations between Local 32B S.E.I.U. and the Owners Maintenance Co. (O.M.C.) an agreement was worked out that would provide for John's reinstatement to his job on September 29, 1975. We welcome Brother John back and thank all the people who supported his case.



John



Fausto

Union Brother Fights For Seniority

Union Brother Fausto Gonzalez, who is the second most senior security officer at 1 Penn Plaza, began working there in December of 1972. After having worked all tours of duty (day, night, and early morning), over 8 months ago he requested to work the day shift with Saturdays and Sundays off. In the last 8 months several new men have been hired and have been given the day shift with Saturday and Sunday off.

Brother Fausto is a family man and wishes to have that time available to be with his family, who he rarely sees now. Brother Fausto is being discriminated against as a Puerto Rican while friends of the supervisor are brought in and given preferred shifts and posts. Fausto has a grievance pending with Local 32B and needs the support of everyone to win his case.

(Continued from page 1)

Jaime Veve and Tommy Soto, along with other employees in the building forced the two above companies to hire the only two Black American day porters who work in the building at present. They pointed out to the company that their hiring practices were discriminatory, and that relatives and friends of the top circles of management were being given jobs in the building while poor people, Black and white, who had submitted applications to OMC months before, were being told that there were no jobs.

These two brothers have fought for the rights of all workers. They organized support for the Day Matron when the OMC reduced her working hours while at the same time increasing her work load in violation of her contract. When the company harassed and threatened or fired a worker unjustly, or violated the contract of the guards, of the porters, of the matrons, or of any other workers, Jaime and Tommy assisted the injured party in going to the union for relief. Recently, when the guards' contract expired they helped the guards draw up a set of demands for the new contract. For this, the company has spread rumors about them and has vowed to get rid of them.

The real reason that brothers Jaime Veve and Tommy Soto have been fired is because these workers have challenged the racist, discriminatory, anti-labor, and anti-woman practices in the building; because they have dared to attempt to organize the workers in the building to stand up for their rights as human beings.

Since the firings, the OMC and H-S have conducted a campaign of terror and harassment against employees who support Tommy and Jaime. Members of local 32B S.E.I.U. working in the building as porters and guards have been threatened by Phil Cimusz, Roy LeClaire, and chief of security, John Cuomo (see supporting statements below). John Cuomo, an ex-cop who carries a gun, has gone so far as to physically threaten workers in the building!

Don't let these brothers be railroaded out of a job during these times of extreme economic crisis by false charges and goon tactics. The OMC and H-S, Inc. cannot find one ounce of dissatisfaction with the actual work of these two employees, therefore they have resorted to phony charges of falsification of records after Jaime Veve has been working for over one and a half years and Tommy Soto has worked for over two years in the building.

Fellow working people of the building and the adjoining area, please help Tommy Soto and Jaime Veve get their jobs back.

Letter to Contract Arbitrator
from Members of Local 32B

Dear Mr. Marlin:

We members of Local 32B urge that Jaime Veve and shop steward Tommy Soto be reinstated with all back pay and seniority at 1 Penn Plaza.

Since their employment at 1 Penn Plaza Jaime Veve and shop steward Tommy Soto have shown themselves to be good workers and strong union men. They have helped us time and again in pursuing grievances against the Company and in bringing them to the attention of the union. They have aided us in gaining knowledge of our rights under contract with respect to seniority guidelines, grading of overtime, our medical benefits, and many other similar matters. They have helped to unify Local 32B members and in so doing have strengthened the Union in our building. In fact, since their dismissal, things have changed greatly for the worse. Almost every employee has been warned not to associate with or support Jaime Veve and Tommy Soto in regaining their jobs.

We firmly believe that the real reasons for firing shop steward Tommy Soto and co-worker Jaime Veve are that these men have fought for our rights under the contract and therefore are now being singled out by the Company to be made an example of.

Yours respectfully,

This letter was signed by over 20 members of Local 32B—names withheld for fear of repression.



John Cuomo, gun carrying ex-cop, has threatened workers not to testify in support or associate with Jaime and Tommy.

230-



From left to right: Carlos Rivera, fired and reinstated (see article below); Jaime Veve and Tommy Soto, fired (see article page 1); James Minnifield, threatened that he is "next"; Andy Calabrese, fired and reinstated at other building; Teddy Kerin; and Tommy McNally, threatened.

An Injury To One is An Injury To All

Dedicated Worker Wins Partial Victory

Brother Carlos Rivera started work at 1 Penn Plaza in April of 1973. He began as a security officer but was soon transferred to the porters. Carlos is a veteran. His performance at 1 Penn Plaza was so excellent that on March 19, 1974, he was cited by the supervisor, Mr. McManus, for courage, quick reaction and intelligence for single handedly putting out a fire. In a memo circulated to all cleaning personnel, the O.M.C. stated the following:

"On Saturday morning, 3-16-74, a fire developed in the men's locker room on the lower concourse which could have caused major damage if it had not been for the quick reaction of Carlos Rivera, O.M.C. day porter...Fortunately, Mr. Rivera happened to arrive at work and when he observed the fire, broke open the locker and extinguished the flames."

Despite this commendation, in August of 1975, Carlos Rivera was unjustly fired. Brother Carlos, with the support of his fellow workers, went to the union. Through negotiations between Local 32B and the O.M.C., Carlos, in consultation with his fellow workers has accepted a porter's job in another building. Without the support his union brothers gave, this partial victory could not have been possible. Carlos thanks everyone for their support.

Know your union, know your rights.
Local 32B S.E.I.U. 1 East 35th St. N.Y., N.Y. 10016
Union representative for district 3: Andy Dunlea;
Tel: 490-9620 (call between 9-10 a.m. and 4-5 p.m.)

Reminder: Next holiday is Columbus Day, Mon. Oct. 13, 1975

Reminder: Effective Jan. 1, 1975, members with one year of work service will be entitled to receive a second day off, with pay to visit the Local 32B Health Center.

Black Brother

(Continued from page 2)

that James already has experience at this job, since he often filled in on the job when the porter-security man was absent.

We, the workers at 1 Penn Plaza, agree with Brother James that the real reason he has been denied this job at 1 Park Ave. is because of the racism of Owners Maintenance Co. and Helmsley Spear. **WE DEMAND THAT HE BE GIVEN THE JOB HE WAS PROMISED IMMEDIATELY.**

EXPRESS YOUR OUTRAGE AT THIS INJUSTICE BY CALLING THE HELMSLEY SPEAR OFFICES. 687 6400

Vol.1. No. 1

Queridos compañeros y compañeras,

Esta es la primera edición del boletín de los trabajadores de 1 Penn Plaza, miembros de la Local 32B de SEIU. Es la voz de comunicación con nuestros compañeros unionados, amigos, y el público en general. Queremos que ustedes se informen acerca de lo que pasa en nuestro edificio a través de este boletín. En él, publicaremos toda injusticia en contra de los trabajadores que ocurra en el edificio. También se incluirán artículos explicando el contrato de la unión y como se puede usar para proteger nuestros derechos. Esperamos que encuentren este boletín verdaderamente informativo. Le agradeceremos su apoyo en nuestra lucha en contra de la injusticia. Para mas información por favor llame 741-0633.

OBREROS LUCHAN PARA RECUPERAR SU TRABAJO SEGUN AUMENTA APOYO

Audiencia Para Arbitraje

7 De Octubre '75.

El jueves 3 de julio apenas antes del fin de semana del 4 de julio 2 porteros puertorriqueños fueron despedidos del edificio 1 Penn Plaza. La compañía que administra el edificio (Helmsley Spear, Inc.) dirigida por el Sr. Viggiano y la Owners Maintenance Company, dirigida por Phil Cimusz y Roy LeClaire despidieron a Jaime Veve, el portero que limpia las afueras del edificio y a Tommy Soto el "shop steward" quien está a cargo de los servicios sanitarios en el edificio. El pretexto para los despidos fue "falsificación de archivos" sin ninguna otra explicación o especificación dada al tiempo de despedirlos.

¿Cuál es la verdadera razón para despedir estos dos obreros?

Ambos Jaime Veve y Tommy Soto fueron los primeros porteros puertorriqueños en trabajar en turno de día en el edificio. Desde que comenzaron su empleo ellos trabajaron juntos con otros empleados para mejorar las (vea pagina 3)



Tommy



Jaime

Sobre La Cuestion De Antigüedad

El concepto de antigüedad en el trabajo se refiere a la suma de tiempo por cual un obrero trabaja para un patrono particular. Esta suma se cuenta desde el primer día de trabajo. El concepto de antigüedad no solo se aplica en casos de cesantías. En la mayoría de contratos gremiales, como en el nuestro, antigüedad en el trabajo es la consideración mayor en promociones, asignación de trabajo, turnos preferidos, y empleos en trabajos recién creados.

Negros, latinos, y otras minorías llevan menos antigüedad en la mayoría de las industrias porque han sido los últimos en ser empleados. Por eso mismo, cuando hay cesantías, estos trabajadores son los primeros en ser despedidos.

Sin embargo, lo opuesto es la realidad en nuestro edificio, 1 Penn Plaza. Owner Maintenance Company (OMC), nuestro patrono, no ha estado siguiendo el sistema (vea pagina

Compañero Negro Lucha Contra Racismo En O.M.C.



James

Hacen mas de 5 años que el compañero James Brown empezó a trabajar como portero por la Owners Maintenance Co. (OMC). Con 5 años de antigüedad trabajando en 1 Park Avenue, James solicitó un puesto de portero-guardia de seguridad en el cual hasta ese punto solo trabajaban blancos. OMC y Helmsley-Spear (dueños del edificio) se hicieron de la vista larga cuando James hizo preguntas sobre el puesto y como adquirirlo. Cuando James averiguó que la compañía llenó el puesto con alguien de afuera entabló un pleito con la Comisión de Derechos Humanos citando a OMC por discriminación. ¡Poco después de entablar el pleito James se encontró despedido!

James inició una querrela de despedida injustificada con nuestra unión, Local 32B de la SEIU. En la audiencia organizada para oír su caso en noviembre de 1974 James ganó restablecimiento en su trabajo y pago por el tiempo perdido. En la misma audiencia OMC le habló a James acerca de su pleito de discriminación que todavía estaba pendiente. OMC le aseguró a James que lo asignarian al próximo puesto vacante de portero-guardia de seguridad si retiraba el pleito. James quedó de acuerdo con esto.

Al poco tiempo de regresar a su trabajo en 1 Park Avenue OMC trasladó a James al edificio en 1 Penn Plaza donde está ahora trabajando, de noche como portero. Mientras trabajaba ahí se enteró que el puesto de portero-guardia de seguridad había sido asignado a un blanco (vea pagina 4)

Trabajador Volca Cesantía Discriminatoria

Nuestro compañero unionado John Eliacin empezó a trabajar como guardia de seguridad en 1 Penn Plaza en septiembre de 1974. Es un trabajador excelente con varios años de experiencia en la area de seguridad.

En agosto de 1975, John fue cesanteado aunque tenía antigüedad sobre otros empleados. Con el apoyo de sus compañeros John fue a la unión e inició una querrela en contra de esta cesantía discriminatoria.

El resultado de las negociaciones entre la Local 32B de SEIU y Owners Maintenance Co. fue un acuerdo restableciendo a John en su trabajo el 25 de septiembre de 1975. Le damos la bienvenida a nuestro compañero John y agradecemos a todos los que dieron su apoyo en el caso.



John



Fausto

Boricua Lucha Para Hacer Cumplir El Concepto De Antigüedad

Compañero Fausto Gonzalez guardia de seguridad empezó a trabajar en 1 Penn Plaza en diciembre del 1972. El es segundo en antigüedad y a trabajado todos los turnos (día, noche, y de madrugada). Hace 8 meses él pidió que lo trasladaran al turno del día con sábados y domingos libres. Varios guardias nuevos han sido empleados en los últimos meses y han sido asignados al turno de día que él desea.

El compañero Fausto es un hombre de familia y quiere tener un poco de tiempo libre (vea pagina 4)

Obreros Luchan....

(viene de la pagina 1)

condiciones de trabajo y acabar con todas las prácticas discriminatorias dirigidas contra los empleados del edificio por Helmsley Spear y la Owners Maintenance Company.

Jaime Veve y Tommy Soto, junto a otros empleados forzaron a las dos compañías anteriormente mencionadas a que empleara al único negro americano que está al presente trabajando en turno de día. Ellos le hicieron saber a esta compañía que su prácticas de empleo eran discriminatorias y que los familiares y amigos en los altos círculos de la administración estaban siendo empleados mientras que a la gente pobre, blancos y negros que habían entregado solicitudes a OMC con meses de anterioridad se la decía que no había empleos.

Estos dos compañeros han luchado por los derechos de todos los trabajadores. Ellos organizaron el apoyo para la matrona cuando OMC redujó sus horas de trabajo y a la misma vez le aumentó la cantidad de trabajo en violación a su contrato. Cuando la compañía hostigó y amenazó con despedir a un empleado injustamente o violó los derechos de los guardias, de los porteros, de la matrona, o de cualquier otro trabajador Jaime y Tommy estaban allí presentes ayudando a las partes agraviadas a ir a la unión en busca de satisfacción. Recientemente cuando el contrato de los guardias expiró ellos ayudaron a los guardias a delinear una serie de demandas para el nuevo contrato. Por estos la compañía comenzó a circular rumores sobre ellos y se ha prometido salir de ellos.

La verdadera razón por la que los compañeros Jaime Veve y Tommy Soto han sido despedidos es porque estos trabajadores han desafiado las prácticas racistas, discriminatorias, anti-trabajador y anti-femenina en el edificio; porque ellos se han atrevido a organizar los trabajadores en el edificio para que se levanten por sus

derechos como seres humanos.

Desde los despidos, la OMC y H-S ha conducido una campaña de terror hostigamiento contra los empleados que apoyan a Tommy y a Jaime. Miembros de local 32B SEIU trabajando en el edificio como porteros y guardias han sido amenazados por Phil Cimusz, Roy LeClaire y el jefe seguridad, John Cuomo (vea abajo declaraciones de apoyo). John Cuomo, un policía quien carga un revólver, ha llegado al extremo de amenazar físicamente a empleados en el edificio.

No permitas que estos compañeros sean apresurados fuera de su trabajo en estos tiempos de extrema crisis económica cargos falsos y tácticas de matón. OMC y H-S Inc. no pueden encontrar ni una onza de satisfacción con el trabajo de estos empleados por lo tanto han recurrido un engañoso de falsificación de archivos despidiendo a Jaime Veve lleva trabajando mas de un año y Tommy Soto lleva mas de dos años trabajando en el edificio.

Compañero trabajador del edificio y adyacente, por favor, ayuda a Tommy Soto y Jaime Veve a conseguir de nuevo sus trabajos.

Para ayudar a Jaime y a Tommy llama al 741-0633.

Sobre Antigüedad

(viene de la pagina 1)

antigüedad estipulado en nuestro contrato negros, los puertorriqueños, y otros trabajadores minoritarios quienes han acumulado antigüedad en su trabajo han sido víctimas de discriminación en promociónes asignaciones de trabajo, puestos preferenciales etc.

OMC nos ha frustrado y desanimado al no reconocer nuestros derechos y de ir a la unión—Local 32B de SEIU. Han amenazado a los hombres en la unión con cesantías y despidos notifican a la unión acerca de sus quejas. Estos casos siguientes ilustran la violación de nuestros derechos.

Obrero Dedicado Gana Victoria Parcial En Despedida Injusta

Compañero Carlos Rivera empezó a trabajar en 1 Penn Plaza en abril de 1973. Empezó en el puesto de guardia de seguridad pero muy pronto fué trasladado al puesto de portero. Carlos es veterano. Su trabajo tan sobre saliente ganó la mención favorable del supervisor, Sr. McManus, por su pronta reacción, valor e inteligencia demostrados cuando apagó un fuego a solas el 19 de marzo de 1974. En un memorándum circulado entre todo el personal de limpieza, OMC escribió:

"Durante la mañana del sábado, 3-16-74, un fuego empezó en el cuarto de roperos de hombres el cual pudo causar daño extenso si no fuera por la pronta reacción de Carlos Rivera, portero en turno de día de OMC. . . . Afortunadamente, el señor Rivera se reportó a trabajar a esa hora y al ver el fuego rompió el ropero y sofocó las llamas."

A pesar de esta comendación, Carlos Rivera fué despedido injustamente en agosto de 1975. Carlos, respaldado por sus compañeros del trabajo, fué a la unión. Tras las negociaciones entre la Local 32B y OMC, y en consulta con sus compañeros, Carlos ha aceptado un puesto de portero en otro edificio. Sin el apoyo de sus compañeros en la unión, esta victoria parcial no hubiera sido posible. Carlos les da las gracias a todos por su apoyo.

Boricua Lucha....

(viene de la pagina 2)

disponible para estar con los suyos los cuales ve raramente. Mientras amigos del supervisor son empleados y reciben turnos y puestos de preferencia, Fausto es víctima de discriminación por ser puertorriqueño. Fausto tiene una querèlla pendiente con la Local 32B y necesita el apoyo de todos para ganar el caso.

Compañero Negro Lucha....

(viene de la pagina 2)

tero-guardia de seguridad que le prometieron originalmente estaba vacante otra vez.

De nuevo OMC empleó, una persona de afuera para el puesto rompiendo así el acuerdo hecho con James. El entabló entonces el pleito de discriminación con la Comisión y abrió el caso nuevamente.

Desde el mes pasado nuevamente el mismo puesto se encuentra vacante en 1 Park Avenue. ¡El puesto se lo han ofrecido a varios trabajadores en 1 Penn Plaza aunque estos tienen menos antigüedad en el trabajo que James quien, además, tiene la experiencia porque ha substituido en este trabajo cuando el portero-guardia de seguridad faltaba!

Nosotros los obreros de 1 Penn Plaza estamos de acuerdo con el compañero James que la razón verdadera por la cual se le a negado este puesto en 1 Park Avenue es el racismo de la OMC y Helmsley-Spear. Demandamos que se le de el trabajo prometido inmediatamente. Expresa su afrenta contra esta injusticia llamando a las oficinas de Helmsley-Spear, 687-6400 .

Conozca a su unión, sepa sus derechos.

Local 32B, SEIU 1 Calle 35 Este, N.Y., N.Y. 10016.

Representante de la unión en el distrito 3: Andy Dunlea

Teléfono: 490-9620 (llame de 9-10 a.m. y de 4-5 p.m.)

Recuerdo: El próximo día de fiesta es el día de Colón, lunes, 13 de octubre de 1975.

Recuerdo: Desde el 1 de enero de 1975 miembros de la unión con un año de trabajo tienen el derecho de recibir otro día libre pagado para visitar el Centro de Salud de Local 32B.

July 21, 1974

From: Jaime Veve

235

To: Joint Industrial Grievance Committee

Dear Sir:

The notice put on the wall in the clockroom by Jack McManus the supervisor of 1 Penn Plaza this week, which is purposely misdated comes as a big surprise to me. The notice stated that breaks (in our relief periods) were not allowed and that anyone caught doing so would be subject to immediate dismissal. From the very first day that I began working at 1 Penn Plaza, which was in February of 1974, we have been allowed to have a 20 minute break once in the morning and a 20 minute break once in the afternoon. Countless times Jack McManus and Cimunz have seen me coming or going on a break. It seems to me that this is part of harassment and a general crackdown on us the workers at 1 Penn Plaza. The reason being that we have made our opinions obvious regard to the firing of Andy Calabrese and our readiness to support him as a fellow union brother. Because of the above I request to test at the hearing concerning relief periods or breaks on Wed. July 24, for the original complaint was put forth on behalf of all the men.

Yours truly,

Jaime Veve
Jaime Veve

Sworn to before me.

This 23rd day of July 1974

Edmund Dollinger

EDMUND DOLLINGER
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-007273
Qualified in New York County
Commission Expires March 30, 1976

NATIONAL LABOR RELATIONS BOARD
Docket No. _____
INTERNAL SECURITY NO. _____
10
In the presence of _____
Date _____
No. Pages _____
COURT REPORTER

236

NATIONAL LABOR RELATIONS BOARD

Docket No. _____

11/11/75

Circular 11

In the _____

Date _____

at _____

Day Matron Member of Local 32J SEIU
Day Porters Members of Local 32J SEIU
1 Penn Plaza
New York, N. Y.
May 1, 1975

Bob Currenti, Union Delegate Local 32J SEIU
237 East 36th Street
New York, New York

Dear Brother Bob:

We are writing this letter with the view of being of some help in the matter concerning Teresa DeSalvatore. Recently, her work schedule was reduced by one hour, from seven hours to six. Also her lunch period was reduced from one hour to 1/2 hour. The entire day crew of porters wishes to make it known that we will fully support and testify on behalf of sister Teresa.

Teresa began working at 1 Penn Plaza in May 1972. At the time she was responsible for maintaining toilet paper, hand towels, hand soap and pads at adequate levels for 9 floors. They were floors #2, 3, 4, 5, 21, 22, 23, 27, 28. These floors combined, totaled 21 bathrooms which contained 70 commodes, 42 towel dispensers, 42 soap dispensers and 21 pad machines. She was working 5 hours at the time.

Within a year her duties were doubled and even tripled, because the building is gaining in occupancy as new floors are opened. For this additional work she was allotted 2 extra hours! She has been working seven hours per day for the last year and her work load has continued to increase. As of three weeks ago she was covering about 35 floors! These floors combined, totaled 64 bathrooms containing 222 commodes, 121 towel dispensers, 126 soap dispensers and 63 pad machines.

In order to keep up with the work load, she frequently works her lunch period (without pay). In addition, on many occasions the Porters that service the men's bathrooms help her out by doing some of her work. We have urged Teresa for over one year to approach the Union about this situation and one of us has actually called without her knowledge. She is an elderly, quiet person who "does not wish to make trouble" and has felt indebted for having a job particularly during this economic period. In addition Mr. Cimuz of the OMC has pointed out how lucky she is to be gainfully employed. He says this every time they add work to her schedule.

Along with Teresa's cut in hours -- there has been a corresponding cut in her work load. A new woman has been added for 4 hours per day. It is important to note that this new woman has also had her hours cut. For the past 4 years she has been working 6 hours (at another location) and as of 3 weeks ago she has been assigned to work 4 hours in this building. Here is an example of two working women being pitted against each other. So at present Teresa works for six hours and the new woman works 4 hours. This is absolute proof that the job Teresa was doing in seven hours is now being done by 10 hours by both women!! We hope the

237

Bob Currenti

-2-

May 1, 1975

Union will seek the new woman out and help her regain her two lost hours also. Her name is Marie Lefloch.

Two day Porters cover the men's bathrooms. Each of them is allotted 10 hours for bathrooms, and they each have to cover about half the floors that are open. Statistically, it looks like this -- in 10 hours they are assigned 35 floors totaling 73 bathrooms containing 193 commodes and 159 towel dispensers. In these 10 hours, they attend to toilet paper and hand towels only! They are also allotted an additional 3 hours to attend (once a week) to filling up the 130 soap dispensers in their bathrooms. In addition to having these 6 hours extra per week to handle soap, the men's bathrooms do not have pad machines -- this is an additional task that the matron has to do.

If we define the attending to a commode as a task and the attending to a towel dispenser as a task, and the attending to a pad machine machine as a task -- then the following comparison can be made: The two men have 352 tasks (# of commodes plus towel dispensers). Teresa (and now both women) had 406 tasks (# of commodes plus towel dispensers plus pad machines). In addition the men are allotted 6 hours for soap while the women are expected to attend to soap in their regular allotted time. So you can see that even with the new woman, they are doing more work than the men in an equal time period.

We should add, that the 2 men are an average of 25 years younger than the women -- and in addition, they (the men) carry their towels and toilet paper in a large barrel which they fill twice a day, -- while the women may make 2 trips each to the store room to fill their shopping bags.

We believe that Teresa's reduction of hours is unwarranted even by her present work load and that this action by the company is in violation of the contract which reads "no provision of this agreement shall be construed so as to lower employee wage." Her wages have taken a serious "lowering", 5 hours a week at \$3.85/hr = \$20.00/week. Also we wish to add that when Teresa is out sick on vacation -- the Porters have been assigned her work. This is in violation of the building agreement which reads "if for any reason, the working force is insufficient to service the regular assigned space to be serviced by a regular work schedule on any particular building, or if through absenteeism, there are insufficient employees to service the building, the employer shall direct employees to work additional hours over and above their regular schedule..." -- all of the times involved we have been directed to do Local 32 J's work. On one sole occasion when Teresa was out, another union woman was brought in. She worked for 2 hours and then quit!! She did so on the basis that the amount of work was too much for her to handle and she was younger, much stronger woman.

We would like to inquire if it is possible for Teresa to get paid for the hours she worked during her lunch hours. The OMC is aware that she worked during her lunch periods, that's probably what prompted them to bring in another woman and several of us can testify to this.

238

Bob Currenti

-3-

May 1, 1975

Please maintain this letter in the hands of the Union only, for the time being. We hope it is helpful and at the time of a hearing we will be available to testify.

Respectfully yours,

ANDY CALABRESE (Shop Steward-Utility Man)

JAMES MINNIFIELD (Concourse Man)

TOMMY McNALLY (Lobby Man)

CARLOS RIVERA (Bathroom Man)

TOMMY SOTO (Bathroom Man)

HARRY HOLMES (2nd Utility Man)

JAIME VEVE (Outside Man)

NELSON TIMMONS (Acting Foreman)

TERESA DE SALVATORE (Day Matron)

239

Um Ex 1

MEMORANDUM

TO: William G. Muller
O.M.C.

FROM: Richard J. Isolini

RE: One Penn Plaza

DATE: June 18, 1975

We have been having continuing problems with your following employees. You are hereby requested to transfer them from the above property no later than the end of the working day of June 21, 1975.

2/21 - Thomas Sato
2/68 - Andy Calabrese
2/44 - James Veve

Richard J. Isolini

RJI:JG

cc: Fred Viggiano

NATIONAL LABOR RELATIONS BOARD

Docket No. _____ OFFICIAL EXHIBIT NO. 5916

Disposition	{	Id. i:	_____
		Rec'd:	_____
		Rejec:	_____

In the matter of _____

Filed _____ Witness _____ Reporter ARLYNE SEGAL

No. Pages _____ Court Reporter

240 *Am 43*

✓

Thomas Soto, Acting Foreman
1 Penn Plaza
New York, New York
February 25, 1974

NATIONAL LABOR RELATIONS BOARD
Docket No. _____ OFFICIAL REPORT NO. *CPI*

Mr. P. Cimusz
Owners Maintenance Corporation
420 Lexington Avenue
New York, New York

Disposition

Accepted ☒

Rejected ☐

In the matter of _____

Date _____

Witness _____

Reporter _____

No. Pages _____

Dear Mr. Cimusz:

I am writing this letter with the point of view of developing a perspective for myself regarding the different problems that have arisen on the job.

As you probably know I started working at 1 Penn Plaza in May 19 3. At the time there were a total of 5 men including myself. The head proter was Bob Morhead. After about 3 months on the job and after becoming familiar with as many aspects of the work as possible, a discussion was initiated with me with respect to my taking on the responsibility of job leaderman. When I first worked under Bob Morhead, the atmosphere was very oppressive in the sense that all the men were always being intimidated and threatened. Needless to say this atmosphere did not help in the output of work -- the men generally did what they were told but did it slower, without consciousness or cooperation. When I took over the job I handled the men differently. I treated them more equally, working with them on all work projects and generally setting a good example. I also encouraged the development of team cooperation and responsibility on the job. This soon paid off in many visible ways. The men generally increased their production by as much as 4 or 5 fold. For example, when I first arrived, the upstairs men would stay on their floors all day -- but I initiated a system by which they would do their tasks and then report back to me every morning, which allowed them to do other necessary work. I have, over the last 9 months, gained their confidence as a fair person who can be called on to discuss any problems. In addition, all the friction and antagonism that existed between the Supervisor and the men, which even led the Supervisor to develop ulcers, has been greatly diminished. To sum it up, the building is cleaner, there is higher productivity, the Supervisor is pleased and the men feel comfortable and are generally more responsive to the needs of the building. Of course, none of this was achieved without great sacrifice and constant attention by myself.

241

Mr. P. Cimusz
February 25, 1974
page 2

I have worked in other jobs where I have been in charge of fellow workers and have gained some experience in welding people together to be effective in our work. For example, when I was Head Counselor of Camp 41, I was in charge of 15 counselors and a total of about 200 children. I was also assistant to the director of a community center where I had a similar number of counselors and children under me. I know the importance of when carrying out the policy of the institution that there be consultation with the person who handles the employees directly. If after a person builds up a relationship amongst the employees and himself, a higher authority proceeds to resolve questions or problems without consulting the person who deals with the employees, this simply serves to undermine the established relations and bring about undue tensions and strain onto those involved. It also serves to undermine the authority which was granted by the institution and the confidence that was gained from the fellow employees. And I cite the above ambiguous example because this has occurred occasionally on the job.

As You know, I recently have had several examinations which have indicated a medical condition developing from strain and stress and of course other factors. Some of this I am sure has developed due to the pressure of the job as job leaderman. I know also that at times I tend to fly off the handle when the situation calls for composure. I have been advised to do whatever is necessary to alleviate some of this tension. I know you have advised that I take it easy and take some time off and have encouraged me to stay on as job leaderman, and I have considered this seriously. But I find it difficult to relax when the problems are intensifying. So as of this writing, I wish for the Company to look forward to making me once again a regular porter with regular responsibilities - whatever they may be. This decision has not been easy in view of the material incentive of money and title, which I was assured would be forthcoming. I have discussed this with my family. I also must state that in my dealing with you I have found you to be generally receptive and fair. I hope to remain on the job in the present position for the coming period until a new man is selected or a new man is brought in.

Recently there has been a controversy at work over the behavior of Andy Calabrese who is alleged to have disappeared while on the job. I have not been informed of what measures the company has taken or is planning to take on this matter. I have not been asked for an opinion. I wish to briefly review my knowledge of this individual. He is the man with the most experience in the various aspects of maintenance work in the building. I understand he has worked with the company for over 8 years, and has certainly contributed towards teaching everyone various skills. He has also aided in bringing the men together for the purpose of higher productivity. Since I have been

242

Mr. P. Cimusz
February 25, 1974
page 3

on the job he has been the least absent (perhaps 2 days out of 9 months) and is punctual and rarely late. Like all the men on occasion problems can develop, but these problems are straightened out within a short time. I feel that taking repressive measures against him at this time will not help to alleviate whatever problems exist. After speaking with him and others I feel there has been a misunderstanding and consequently a hardening of positions on both sides when it seems there was a basis for his alleged disappearance. Finally, I wish to state that I have no personal friendship with this man other than our relationship at work. It seems to me that to deal with him harshly when he and all the other men have made a 100% improvement as compared to their behavior in the period of Bob Morhead, may show a lack of balance in view of the fact that they are all generally putting out more for the company. I hope you give careful consideration to all the things I have discussed in this letter.

Respectfully yours,

Thomas P. Soto

Thomas P. Soto

243

Local 32B Members
1 Penn Plaza
New York, New York
August 12, 1975

NATIONAL LABOR RELATIONS BOARD

Docket No. _____ OFFICIAL RECORD NO. _____

Expedited

George Marlin, Contract Arbitrator
2 West 46th Street
New York, New York

In the matter of _____
Date _____
N.L.R.B. Case No. _____

Dear Mr. Marlin:

We members of Local 32B urge that Jaime Veve and shop steward Tommy Soto be reinstated with all back pay and seniority at 1 Penn Plaza.

Since their employment at 1 Penn Plaza Jaime Veve and shop steward Tommy Soto have shown themselves to be good workers and strong union men. They have helped us time and again in pursuing valid grievances against the Company and in bringing them to the attention of the union. They have also aided us in gaining knowledge of our rights under the contract with respect to seniority guidelines, granting of overtime, our medical benefits, and many other similar matters. They have helped to unify all Local 32B members and in so doing have strengthened the Union in our building. In fact, since their dismissal, things have changed greatly for the worse. Almost every employee has been warned not to associate or support Jaime Veve and Tommy Soto in regaining their jobs.

We firmly believe that the real reasons for firing shop steward Tommy Soto and co-worker Jaime Veve are that these men have fought for our rights under the contract and therefore are now being singled out by the Company to be made an example of.

Yours respectfully,

Carlos Rivera
Gregory Ray, Vice Pres
Janet Gonzalez
Joe Ceballos
Wesley H. Hunt
Harold Holmes
James Brown
Hilario Garcia
Vicente Hernandez
John Doe

Yusef Ibrahim
Richard O. Conner
Thomas J. M.
Anthony L. H.
Peter J. Murray
James J. Minicelli
Albert J. H.
Bob J. H.
Angel Colon

1 - (244) - - - - - x
In the Matter of the Arbitration between

JOHN J. SWEENEY, PRESIDENT, LOCAL 32B,
SERVICE EMPLOYEES INTERNATIONAL UNION

- and -

OWNERS MAINTENANCE CORP.

- and -

RECEIVED

APR 15 1976

REALTY ADVISORY BOARD
ON LABOR RELATIONS, Inc.

OPINI

and

A W A

THE REALTY ADVISORY BOARD ON LABOR RELATIONS, INC.

----- Case #93 - D-21375 -----
APPEARANCES:

For the Union

Israelson & Streit, Esqs.
By: Ronald Raab, Esq.
Anthony Sclafani, Chairman
Andrew Dunlea, Business Agent

For the Employer:

James Early, President
Fred Viggiano, Building Manager
Philip Cimusz, Personnel Manager
Richard Isdini, Property Management
Roy LeClaire, Superintendent
John Cuomo, Director of Security

For the RAB:

James Berg, Esq.

Employees:

Alan Levine, Esq.
Thomas Soto
Jaime Veve

Premises:

1 Penn Plaza
New York, New York

A dispute having arisen between Owners Maintenance Corp., concerning its property at 1 Penn Plaza, New York, New York, and the Realty Advisory Board on Labor Relations, Inc. (hereinafter referred to as the "Employer"), and Local 32B, Service Employees International Union (hereinafter referred to as the "Union"), the same was submitted to the undersigned for arbitration and award pursuant to pertinent provisions of the current Collective

Bargaining Agreement between the parties at hearings held on August 5, 1975, September 2, 1975, October 7, 1975, October 15, 1975, November 11, 1975, December 9, 1975, and January 13, 1976.

Thomas Soto and Jaime Veve, employed as porters by the Company since May, 1973 and May, 1974, respectively, were discharged on July 3, 1975 for all falsifying their employment applications. The parties stipulated to submit for adjudication whether or not such discharges were for just cause, and whether or not the said grievants should be reinstated with back pay.

On July 9, 1975 and again in early October of 1975, the grievants handed out leaflets in front of 1 Penn Plaza accusing the Company and Helmsley-Spear, Inc. of engaging in anti-union, racial discrimination and terrorist activities against the grievants and other employees at 1 Penn Plaza. Helmsley-Spear Inc. is the managing agent of the building and is the parent corporation of the Company which is contracted to provide cleaning, maintenance and security services to the building.

The Company contends that the aforementioned leafleting activity engaged in by the grievants constitutes disloyalty and is sufficient by itself to deny the grievants reinstatement to their jobs.

Local 32B, (hereinafter referred to as the "Union"), contends that the real reason for the discharges was the extensive Union activity engaged in by the grievants and that the falsification of employment applications was no more than a pretext. Thus, the Union argues, since the discharges were for Union activity they are illegal. Moreover, the Union contends that the leafleting activities engaged in by the grievants is protected activity under the law and, as such, cannot be used as

(246)

a reason to deny the grievants reinstatement.

The arguments put forth by both sides have made this matter far more complicated than a normal discharge case. The issues which must be determined herein are as follows:

- 1) Did the Company have just cause to discharge the grievants?;
- 2) Were the grievants discharged for engaging in union activity?;
- 3) Did the leafleting activity engaged in by the grievants constitute sufficient disloyalty toward the Company to justify a denial of reinstatement?;
- 4) Was the distribution of leaflets protected by law?

FACTS

Soto and Veve were discharged on July 3, 1975 allegedly for falsifying their employment applications. All those seeking employment with the Company are required to fill out job applications. These applications contain the following statement two paragraphs above the signature line:

" I hereby affirm that the answers to the above are true and correct to the best of my recollection and understand that any falsification can result in my discharge if I am employed."

Soto's application is dated May 7, 1973 and Veve's is dated January 30, 1974. Each application contains the question "Have you ever been arrested? (except for traffic violations)" Each grievant answered this question in the negative.

John Cuomo, Chief of Security for the Company testified that he had obtained evidence that Soto had been arrested on a drug related charge in 1967, and disorderly conduct in 1972;

and that Veve had been arrested twice in 1972, once for parading without a permit and again for resisting arrest and obstructing governmental process.

The grievants conceded the aforementioned and also conceded that on one occasion, each of them paid a small fine. They both testified that they were aware that they had falsified their applications and did so because they felt that the matters for which they were arrested were trivial and they did not want to risk losing potential jobs by mentioning them.

When questioned as to why these two employees were singled out for investigation with only two or three others, Cuomo testified that he had received an anonymous phone call saying that the grievants were involved in a series of thefts in the building. He further stated that for the next several weeks he followed and observed the grievants but could find no evidence of questionable activity. Still not satisfied, he obtained arrest records from the Police Department on Soto, Veve and another employee by the name of Calabrese. He forwarded this information in a memorandum dated June 17, 1975 to Fred Viggiano the Building Manager; the memorandum reflects the arrests of the three employees but not the dispositions. It also included a statement, which Cuomo concedes, was in error that in 1967 Soto was arrested for the sale of heroin.

The following day a memorandum was sent from Richard Isol (Property Manager for Helmsley-Spear, and an immediate superior of Viggiano), to William Muller of the Company stating "We have been having continuing problems with your following employees. You are hereby requested to transfer them from the above property

(1 Penn Plaza) no later than the end of the working day of June

1975." The three employees referred to were the two grievants and Calabrese. The Company accordingly decided to discharge the three employees.*

On cross-examination, Isolini was questioned about what he meant by "continuing problems" in his June 18 memorandum and never did give a clear response.

Since the Union sought to prove that the grievants were.. really discharged for their union activity, it presented evidence of their activities on behalf of their fellow employees in terms of assisting them with grievances and making sure that the Company abided by the terms of the Collective Bargaining Agreement.

Soto became the shop steward at 1 Penn Plaza on May 1, 1975 but he testified that he was active in seeking to protect the interests of his fellow employees prior to that time. He testified as to a series of occasions upon which he complained to the Company about practices which he felt were in violation of the contract. In July of 1973, Soto protested to Phil Cimusz, Personnel Director for the Company, that there were no black porters in the lobby and indicated that the Company's hiring practices were therefore discriminatory. Cimusz allegedly responded that black people were ugly and should not be put in the lobby where they would be more visible to the public. Nevertheless, in December 1973, a black porter was placed in the lobby.

In May 1974, Soto complained to Cimusz and his immediate supervisor Jack McManus about the Company's custom of hiring

*The Calabrese matter was handled separately.

relatives and friends of the "bosses" during the summer months at the expense of unemployed Union members. He further complained of the transfer of one James Minnifield in order to accommodate a "boss' son."

In June 1974, Soto testified at a hearing on behalf of Calabrese who had been discharged. Calabrese was returned to his job without back pay.

In July 1974, the Company eliminated the practice of coffee breaks for the employees, allegedly as retribution against them for supporting Calabrese. Soto grieved the elimination of coffee breaks and the matter was eventually disposed of through arbitration.

In April 1975, Soto and Veve helped a unit of security guards at 1 Penn Plaza, also represented by the Union, to prepare their demands for a new Collective Bargaining Agreement. Although Soto and Veve did not attend the negotiations for the guards' contract there was testimony that a member of the Company negotiating team stated that a "behind the scenes lawyer" by the name of Tom Soto was responsible for all the problems. The guards' contract was, however, peacefully concluded.

There is relatively little evidence of Veve's Union activities aside from the fact that he often accompanied Soto. The only incident in the record indicating any independent Union activity on the part of Veve occurred in June 1975 when he complained to the Company about the treatment extended to a fellow Employee by the name of Carlos Rivera.

There was testimony of several other occasions upon which the grievants accompanied other Employees to the Union for the

purpose of filing grievances. There was no testimony, however, that the Company was aware of these activities. In fact, Any Dunlea, the Union Delegate, testified that he did not advise the Company of Soto and Veve's participation in any of the aforementioned grievances.

There was little testimony of any action taken by the Company against the grievants except for the discharges. On one occasion in 1974, Soto received a warning notice for failing to sign in one day when he was late. According to Soto, none of the Employees had ever been requested to do this before and, on this occasion, it was simply intended as a form of harassment.

In June 1975 Veve was suspended for a day for alleged insubordination. Veve claimed that he was following instructions and was being harassed because of his Union activity.

On July 9, 1975, six days after the discharges, the grievants stood in front of 1 Penn Plaza handing out leaflets to passersby. They continued this activity for two days. The leaflet was a one page statement in which the grievants sought support of the public in getting their jobs back. The leaflet states in part:

" The real reason that brothers Jaime Veve and Tommy Soto have been fired from the day shift of the porters is because these workers have challenged the racist, discriminatory anti-labor, anti-woman practices in the building. Because they have dared to attempt to organize the workers in the building to stand up for their rights as humans."

In early October 1975, the grievants distributed another leaflet in front of the building. This second leaflet was a four page statement in both English and Spanish repeating and

expanding upon the allegations made in the first leaflet. In addition, the Company and Helmsley-Spear are accused of conducting "a campaign of terror and harassment against Employees who support Tommy and Jaime." The leaflet also contains an open letter to the undersigned allegedly from the Employees at 1 Penn Plaza supporting the grievants and stating how much the grievants have helped them in gaining knowledge of their rights. The letter is signed "This letter was signed by over 20 members of Local 32B - names withheld for fear of repression."

THE DISCHARGE

The facts with respect to the grievants' falsification of employment applications are not in dispute. The Union concedes that the grievants falsified their applications but claims that they should not be forced to reveal arrests which did not lead to convictions, and that, in any event, the matters not disclosed were of such a petty nature as to make the failure to disclose them an insignificant infraction of an unjust rule.

The Company contends that it has the right to request arrest information on job applications and that the grievants were fully aware of the consequences of falsifying their applications. If, the Company states, we have the right to make such a rule, we certainly have the right to enforce it.

It is not within the province of an arbitrator to determine what rules an Employer may promulgate with respect to its Employees or prospective Employees. The existence of such rules is a matter to be dealt with between the Union and the Employer. In the instant matter, it has been the Company's

policy to request arrest record information on its job application at least since May 1973 and this practice has never been challenged by the Union. Accordingly, the practice requiring job applicants to disclose their arrest records is a valid one.

It is within the province of an arbitrator, once an Employer's rule has been violated, to determine if the discipline imposed upon an Employee for violation of such a rule is just.

In order to determine whether an Employee should be discharged for misrepresentations on an employment application, there are several considerations which should be made. These are; (1) how serious is the misrepresentation; (2) to what extent could the Employer have been prejudiced by relying on such misrepresentation, and (3) how much time has elapsed between the misrepresentation and the discovery thereof and what type of Employee has he been in the interim?

In the instant case, the misrepresentations involved the failure to disclose two arrests by each grievant. The record reveals that one of the grievants paid a \$25.00 fine for pleading guilty to disorderly conduct and that all other charges were thrown out prior to trial. The only felony arrest was a drug charge against Soto which was dismissed, but with respect to that matter the more serious misrepresentation was Cuomo's advice to his superiors that Soto was arrested for selling heroin without any indication of the disposition. In fact, the Company discharged the Employees without making any investigation into the dispositions of matters for which the grievants had been arrested.

The record is devoid of any evidence to indicate how the Company may have been prejudiced by the grievants' misrepresentations on their job application, other than the contention that they must have been "untrustworthy" if they lied on their applications. In addition, the grievants had worked for over two years and one year respectively with concededly satisfactory work records.

Accordingly, the falsification of job applications by Soto and Veve did not constitute just cause for discharge.

UNION ACTIVITY

The Union claims that the grievants were not really discharged for falsification of their job applications but that this was just a convenient excuse to get rid of them. The real reason for the discharge, the Union contends, is the extensive Union activity engaged in by the grievants.

There is a substantial amount of evidence on the record which indicates that the grievants may have, at least in part, been discharged for reasons other than falsification of job applications. This evidence includes; Cuomo's continued investigation of the grievants after several weeks of fruitless observation despite the questionable reliability of an anonymous tip that they had been involved in thefts in the building; the fact that the decision to discharge the grievants was made with no investigation beyond Cuomo's concededly incomplete and at least partially inaccurate report; and, Isolini's memorandum which stated that the grievants had been a "continuing problem" without any explanation as to what those problems were.

The mere fact, however, that the Company may have had

reasons other than falsification of employment applications for discharging the grievants is not by itself an indication that the grievants were discharged for engaging in Union activity. The Company may have had many other reasons for discharging the grievants which it chose not to air during this proceeding.

The evidence and testimony adduced at the hearings is not sufficient to justify a finding that the grievants were discharged for engaging in Union activity.

Section 7 of the Labor Management Relations Act states as follows:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3).

Section 8 (a) (3) makes it an unfair labor practice for an Employer to discriminate "in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

In order for there to be a violation of Section 8 (a) (3), "there must be both discrimination and a resulting discouragement of Union membership." American Ship Building Co. v. NLRB 380 US 300 (1965).

Co-counsel for the grievants has cited several cases in which violations of Section 8 (a) (3) have been found. In all but one of the cases, discharges of Employees resulting in violation of Section 8 (a) (3) occurred during a Union organi-

zational drive prior to an election. In each of these cases, a substantial amount of evidence was adduced to show that the Employer had engaged in a pattern of conduct bent upon keeping the Union out.

In the instant matter, the record is without any evidence that the Company was seeking to rid itself of the Union. In fact, the Company and Helmsley-Spear have had a long and well-established collective bargaining relationship with the Union, not only at 1 Penn Plaza but at many premises throughout the City of New York. In light of this background, a violation of Section 8 (a) (3) cannot be found without substantial evidence to the effect that the Company sought to discourage the grievant from Union membership or engaging in Union activities. Testimony adduced at the hearings did indicate that Soto had engaged in some Union activities of which the Company was aware. He was the shop steward for a short time before his discharge; was on occasion critical of the Company's hiring practices; and opposed the Company on several grievances. Aside from Soto's discharge, however, the Union failed to develop one significant incident of discrimination against him. The record contains no evidence of any anti-Union statements by any Company official either with respect to the grievants or otherwise. In fact, the record does not even indicate that Veve was significantly involved in Union activities. Accordingly, the evidence is held to be insufficient to establish the fact that the discharges were unlawful within the meaning of Section 8 (a) (3) of the Labor Management Relations Act.

THE LEAFLETS

The facts regarding the distribution of leaflets are not in dispute. The question as to whether or not such activity is grounds for denying the grievants reinstatement is strictly a matter of law. The Union contends that the leafleting is protected activity within the meaning of Section 7 of the Labor Management Relations Act. It cited several cases in which the NLRB and Courts have held that leafleting which is intended to inform the public of an existing labor dispute is protected activity. The Union maintains that the leaflets distributed by the grievants were for precisely that purpose.

The Company, on the other hand, argues that the leafleting constituted disloyalty on the part of the grievants and, as such, is not protected activity within the meaning of Section 7 of the Act. It also maintains that the grievants were bound by the Collective Bargaining Agreement between the Union and the Company to seek redress of their grievances through the grievance and arbitration procedures established thereby. It argues further that the grievance and arbitration procedures are exclusive remedies and that the clause in the contract prohibiting strikes and picketing during the life of the Agreement is intended to prevent precisely what the grievants have done here.

The law is clear to the extent that the distribution of leaflets by an Employee which is derogatory toward his Employer constitutes disloyalty and is not protected activity within the meaning of Section 7 unless it relates to a labor dispute and that fact is disclosed in the leaflets NLRB v. Local 1229 IBEW

257

28 LRRM 1215 (1953).

There is no doubt that the information contained in the leaflets distributed by the grievants were of a derogatory nature but since much of the information contained therein dealt with employment practices and the discharges, the question as to whether the distribution constitutes protected activity still exists. The cases cited by the Union with respect to this issue are really not on point. In the IBEW case and Patterson-Sargent Co. 38 LRRM 1134 (1956) leafleting occurred in the absence of a Collective Bargaining Agreement and during impasse in negotiations. In fact, leafleting in the Patterson-Sargent case occurred during a strike. Leafleting activity in NLRB v. National Furniture Mfg. Co. 52 LRRM 2451 (7th Cir. 1903), also cited by the Union, was confined to a narration of the Employer's commission of unfair labor practices during negotiations.

The facts with respect to the instant matter are quite different. There is a Collective Bargaining Agreement which provides an exclusive means for redressing grievances. This same Agreement specifically prohibits picketing activity during the term of the Agreement. The primary purpose for the existence of grievance machinery is to prevent Employees from engaging in self-help measures in order to redress grievances. The grievants herein did take advantage of the grievance machinery provided by the contract but, according to their testimony, felt that they could apply additional pressure upon the Company by publicizing those conclusions which they had reached about the Company's employment practices. This activity is not protected by Section 7 of the Act.

The case most closely on point is Emporium Capwell Co. v. Western

Waco 88 LRRM 2660 (U.S. Sup. Ct. 1975), where the Supreme Court held that the employees who engaged in leafleting activity to inform the public of the Employer's racially discriminatory employment practices, despite the existence of contractual grievance machinery, were not protected by the Labor Management Relations Act and their discharges were accordingly sustained.

The only difference between the Emperium case and the instant matter is that the grievants herein, were terminated prior to their leafleting activities. This distinction, however, is not significant. Until their employment status is ultimately determined through arbitration, the grievants remain employees and certainly acquire no greater rights during the hiatus than employees who have not been terminated.

Since the leafleting was not protected by Section 7 of the Act, there remains only the question of whether the leafleting constituted sufficient disloyalty toward the Company as to justify a denial of reinstatement.

The grievants testified that they did not intend, through their leafleting, to in any way damage the business of the Company or Helmsley-Spear. They claim to have sought only to inform the public as to the alleged racial, sex and union discrimination and terrorist tactics employed by the Company against its workers. Their stated purpose was to inform the public, and apply pressure against the Company by "rallying support" for their cause. It is suggested, however, that the leafleting must have been intended to affect the Company's business. What else could the grievants have meant by "applying pressure?"

259

The Company is a contractor which provides cleaning and maintenance service to office buildings. Its only product is labor. Public statements to the effect that the Company is racially discriminatory toward and conducts terrorist campaigns against its workers certainly would appear to be potentially damaging to the Company's business. Thus, the grievants' conduct in distributing the above described leaflets must be held to have constituted gross disloyalty toward the Company and calculated to bring pressure to bear by damaging the Company's reputation and its ability to do business. Accordingly, the distribution of leaflets by the grievants is sufficient to justify denying them reinstatement to their jobs.

A W A R D

The Union's grievance seeking reinstatement of Thomas Soto and Jaime Veve to their jobs without loss of pay is denied except that the said Employees are awarded back pay for the period from discharge on July 3, 1975 up to, but not including, July 9th, 1975 when they first engaged in the distribution of leaflets.

Dated: April 13, 1976.

George Marlin

GEORGE MARLIN
Contract Arbitrator

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

On this 13th day of April, 1976, before me personally appeared GEORGE MARLIN, to me known and known to me to be the individual described in and who executed the within instrument and he duly acknowledged to me that he executed the same.

Rose F. Jacobs

ROSE F. JACOBS
Notary Public, State of New York

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 77-4217
	)	
OWNERS MAINTENANCE CORP.,	)	
	)	
Respondent.	)	

CERTIFICATE OF SERVICE

The undersigned certifies that two (2) copies of the appendix
in the above-captioned case have this day been served by first class
mail upon the following counsel at the address listed below:

James Berg, Esquire
Realty Advisory Board
292 Madison Avenue
New York, New York 10017

James Carmichael, Esquire
Proskauer, Rose, Goetz &
Mendelsohn
300 Park Avenue
New York, New York 10022

Elliott Moore

Elliott Moore

Elliott Moore

Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D.C.

this 3rd day of March, 1978

BEST COPY AVAILABLE